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Supreme Court of the United States

OCTOBER TERM, 1964

No. 240

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LOCAL UNION NO. 189, AMALGAMATED MEAT  
CUTTERS AND BUTCHER WORKMEN OF NORTH  
AMERICA, AFL-CIO, ET AL., PETITIONERS,

vs.

JEWEL TEA COMPANY, INC.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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PETITION FOR CERTIORARI FILED JULY 2, 1964  
CERTIORARI GRANTED OCTOBER 12, 1964

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**APPENDIX :**

**DOCKET ENTRIES.**

Reassigned to Judge La Bny.

Jewel Tea Co., Inc.,  
*Plaintiff,*

*vs.*

Local Unions Nos. 189, 262, 320,  
546, 547, 571 and 638 of Amalga-  
mated Meat Cutters and Butcher  
Workmen of North America—  
AFL-CIO, et al.,  
Associated Food Retailers of Great-  
er Chicago, Inc., and Charles H.  
Bromann,

*Defendants.*

No. 58-C-1415.

Basis of Action: Anti-Trust. Sherman Act. Seeks in-  
junction, \$75,000.00, costs and fees.

**Attorneys:**

**For Plaintiff-Appellant:**

George B. Christensen, Fred H. Daugherty, Richard  
W. Austin, Attorneys.

Counsel—Winston, Strawn, Smith & Patterson, 38  
South Dearborn (3) FI 6-3600.

**For Defendants-Appellees:**

(Locals 189, 262, 320, 546, 547, 571 & 638 Amalga-  
mated Meat Cutters & Butcher Workmen.)

Asher, Gubbins & Segall, Leo Segall, 130 N. Wells  
St., and Bernard Dunau, Jaffee & Dunau, 912  
Dupont Circle Bldg., N. W., (6) CE 6-8224.

Robert C. Eardley, 105 S. LaSalle (3) CE 6-1350.

(For Associated & Chas. H. Bromann, Sidney M.  
Libit, Henry D. Lindauer, and Harry H. Henry,  
77 W. Washington St., (2) RA 6-8268.

*Docket Entries.*

- 7-29-58 Filed complaint and (16) copies. (JS-5) 15.00
- 7-29-58 Issued summons and (16) copies with copies of complaint. g
- 8-5-58 Fld summons retd served 16 services. \$50.00 a
- 8-18-58 Filed Appearance.
- 8-18-58 Enter order to extend to plead (on stipulation) to Sept. 26, 1958.—Perry, J.—Mailed notices, 8-20-58 Draft (1) T
- 8-19-58 Fld appearance of Defts Associated Food retailers of Greater Chicago Inc. & Charles H. Bromann and their attys. (1) a
- 9-23-58 Stipulation to extend time to plead to Oct 6, 1958.—La Buy, J. Draft (1) Mailed notices, 9-26-58. T
- 10-2-58 Filed Motion to dismiss—Motion for oral argument—Proof of Service and Brief of deft Unions in support of motion. co
- 10-2-58 Filed Proof of Service of Motion of defendant unions and their named officers and representative to dismiss complaint, the brief in support thereof and the motion to set for oral argument. (1) F
- 10-6-58 Filed Notice & Motion of defts Bromann, et al. to dismiss complt & proof of service. Win
- 10-6-58 Leave to defts Chas. H. Bromann and Associated Food Retailers of Greater Chgo., Inc. to file motion dismissing complt and to adopt by reference all motions and briefs in support thereof heretofore filed by defts Local Unions 189, 262, et al. and leave to pltf to file answering brief within 30 days—La Buy, J. H
- 10-8-58 Mld ntes 10-8-58. H
- 10-29-58 Filed Stipulation. (1)



*Docket Entries.*

3

- 10-29-58 By agreement of all parties plaintiff's time to file briefs in opposition to mtn to dismiss extended to Nov. 25, 1958.—La Buy, J.  
Mld. Ntes. 11-3-58. E
- 11- 3-58 Motion plaintiff passed case calendar for Jan. 1959 term.—La Buy, J.  
Mld. Ntes. 11-6-58. E
- 11-25-58 Filed stipulation. (1)
- 11-25-58 Stipulation motion for extension of time for plaintiff to file brief in support of complaint and oppose to defendant's motions to dismiss to Dec. 2, 1958.—La Buy, J.  
Mailed notices. 12-1-58. T
- 12- 3-58 Filed Stipulation. (1)
- 12- 3-58. Stipulated motion for extension of time in which plaintiff may file briefs in support of its pleadings and in opposition to defts' motion to dismiss complaint to & including Dec. 16, 1958.—La Buy, J.  
Mld. ntes. 12-5-58. I
- 12-16-58 Filed Stipulation. (1)
- 12-16-58 Enter order by stip time to file brief in support of complaint and in opposition to defts motion to dismiss complaint ext. to and including 1-5-59—Campbell, J.  
Mld. Ntes. 12-18-58. E
- 1- 6-59 On stipulation, extend time in which plaintiff may file briefs in opposition to defendants' motion to dismiss the complaint to Jan. 12, 1959 —La Buy, J.  
Mailed notices. 1-9-59. T
- 1-12-59 Filed Brief of Plaintiff in opposition to Defendants motion to dismiss complaint. & Proof of Service. wek

*Docket Entries.*

- 1-15-59 Filed Stipulation (1)
- 1-15-59 Stipulation to extend time of defendants to file brief to Feb. 15, 1959.—La Buy, J.  
Mailed notices. 1-20-59. T
- 2-12-59 Filed Stipulation. (1)
- 2-12-59 Stip to extd defts time to file reply brfs to March 2, 1959.—La Buy, J.  
Mld. ntes. 2-17-59. Ej
- 3- 2-59 Fld reply brief of deft Unions & their named officers representatives in support of motion. co
- 3- 2-59 Fld proof of service (1) t
- 3-10-59 Filed appearance of Eardley & Ward attys for Local Union Nos. 189, 262, 320, 546, 547 & 638 of Amalgamated Meat Cutters & Butchers Workmen of N. A. AFL-CIO. Ej
- 3-16-59 Filed Notice of Motion and Motion. (2) (1)
- 3-16-59 Order requiring notice of all proceedings be given to Eardley & Ward, co-counsel for deft.—La Buy, J.  
Mailed notices 3-18-59. T
- 3-31-59 Filed Memorandum. (5)
- 3-31-59 Defts motion to dismiss overruled.—La Buy, J. E  
Mld. Ntes. 4-1-59 t
- 4- 3-59 On the Court's own motion cause placed on passed case calendar for May 1959 Term.—La Buy, J.  
Mld. ntes. 4-7-59. I
- 4- 6-59 Filed Notice of Motion, and Motion. (2,2)
- 4- 6-59 Move to vacate the court order of Nov. 31, 1959 contd to Apr 27, 1959.—La Buy, J.  
Mld. ntes. 4-8-59. Ej

*Docket Entries*

5

- 4-24-59 Filed Notice & Motion. (2,2)
- 4-24-59 On motion of Plaintiff continued the oral argument set for Monday, April 27, 1959 to May 13, 1959.—La Buy, J.  
Mld. ntes. 4-28-59. I
- 5-5-59 Cause contd to passed case calendar for Oct. 1959 term.—La Buy, J.  
Mld. Ntes. 5-8-59. E
- 5-13-59 Motion defendant to vacate order entered March 31, 1959 continued to May 15, 1959 for hearing.—La Buy, J.  
Mld. ntes. 5-19-59. I
- 5-15-59 Lv to atty Bernard Dunau of Washington, D. C. Bar to practice in this court for the purposes of this case. Argts on mo defts to vacate order entd March 31, 1959 hd & advsmt.—La Buy, J.  
Mld. ntes. 5-20-59. Ej
- 5-19-59 Defts granted leave to file interlocutory appeal and all further proceedings in this Court suspended and stayed until consideration of this matter by the court of appeals (Draft) (1). Defts motion to vacate order of March 31, 1959 overruling defts' motion to dismiss complaint is denied. Order that certain sentence contained in the court's memorandum regarding the allegations of the complaint be and hereby is deleted pursuant to the courts memo filed this day.—La Buy, J.  
Mld. Ntes. 5-22-59. E  
T
- 5-19-59 Filed Memo. (2) E
- 6-22-59 Filed C. C. of order entered 6-19-59 in U.S.C.A. 7th Cir. granting petition of defendants to appeal. B

- 6-30-59 Clerk's File Copy of Transcript of Proceedings had before Judge La Buy on May 15, 1959, filed by official court reporter. H
- 7-13-59 Filed Stipulation for record on appeal. (2) B
- 7-13-59 Filed Statement required by Rule 12(d) of the U.S.C.A., 7th Cir. of appellee. (1) B
- 7-16-59 Transmitted transcript of record on appeal to U.S.C.A., 7th Cir. B 6 70 pd
- 10-6-59 Motion plaintiff passed case calendar for Jan. 1960 term.—La Buy, J.  
Mld. Ntes. 10-9-59. E
- 1-5-60 Motion of pltf, passed case calendar for March 1960 term.—La Buy, J.  
Mld. ntes. 1-7-60. H
- 3-15-60 Contd. to passed case calendar for June 1960 Term.—La Buy, J.  
Mailed notices 3-18-60. ht
- 4-4-60 Filed Opinion of USCA., and Mandate
- 4-4-60 Ordered and adjudged that the orders are affirmed, with costs, and cause be Remanded.
- 4-4-60 Filed receipt of records from USCA Ej
- 5-9-60 Filed Notice and Motion. (1) (2)
- 5-9-60 Enter order for production of documents—Draft—La Buy, J.  
Mld. ntes. 5-12-60. H
- 6-7-60 Mo pltf passed case calendar for Oct. 1960 Term.—La Buy, J.  
Mld. ntes. 6-10-60. Ej
- 10-4-60 Cause continued to passed case calendar for Jan. 1961 Term.—La Buy, J.  
Mailed notices. 10-10-60. ht
- 1-10-61 Mo pltf cs contd to March 9, 1961 for trial.—La Buy, J.  
Mld. ntes. 1-13-61. Ej



*Docket Entries.*

7

- 5- 1-61 Cause transferred to Judge Hoffman—Ex. Com.  
Mld. ntes. 5-15-61. H
- 5-31-61 Cause to retain its place on the calendar. Hoff-  
man, J.  
Mld. ntes. 6-6-61. t
- 6-20-61 On request of Judge La Buy, cs transferred to  
the Exec Comm for reassignment to Judge La-  
Buy—Hoffman, J.
- 6-21-61 Cause reassigned to Judge La Buy, (Draft) (1)  
—Exec Comm.  
Mld. ntes. 6-23-61. Ej
- 9-11-61 Cause contd. to Sept. 18, 1961 at 10:15 am for  
pre-trial conference.—La Buy, J. ht
- Mailed notices 9-14-61. t
- 9-18-61 Pre-trial conf. held.—La Buy, J. t
- 1-29-62 Filed depn of Edward Thomas Vorbeck t
- 2-28-62 Fld. Interrogatories. P
- 7-25-62 Pre trial conf held. Order def't file answer  
within 15 days from date. Cause set for trial  
Oct. 22, 1962.—La Buy, J.
- 7-27-62 Mld. ntes. sp
- 8- 1-62 Fld answer. t
- 8-17-62 Filed Answer of defts Chas. H. Bromann &  
Associated Food Retailers and Affidavit. H
- 10- 5-62 Filed request for admissions. sp
- 10-15-62 Filed objections to interrogs. sp
- 19-18-62 Filed notice of motion.
- 10-18-62 On mo of pltf trial of cause reset from Oct. 22  
to Oct. 24, 1962—La Buy, J.  
Mld ntes 10-19-62. sp
- 10-24-62 Cause called for trial. Opening statements  
made. Evidence heard in part on behalf of plff  
and cause contd to Oct. 25, 1962 at 10 a.m.  
La Buy, J.  
Mld. ntes. 10-25-62. t

- 10-25-62 Filed amendment to complaint. t
- 10-25-62 Fur evid heard in part on behalf of plff. Plff given leave to file amendment to complt & cause contd to Oct. 26, 1962 at 10 a.m. La Buy, J. t  
Mld. ntes. 10-29-62. mm
- 10-26-62 Fur evid hrd on behalf of plff. Plff rests. Defts motions to dismiss the complt argued and taken under advsmt. Cs contd to Oct. 30, 1962 at 10 a.m. La Buy, J.
- 10-30-62 On mo of deft matter set over until Nov. 2, 1962 at 10 a.m. La Buy, J. t  
Mld. ntes. 10-30-62. mm
- 11- 2-62 Additional evid hrd on behalf of plff. Evid hrd in part on behalf of deft & cause contd to Nov. 5, 1962 at 10:30 a.m. La Buy, J.
- 11- 2-62 Filed memorandum opinion.
- 11- 2-62 Mo to dismiss complt as to deft Bromann & Associated Grocers allowed. Enter judgment on the motion. Motion to dismiss complt as to Local Unions is hereby denied. La Buy, J. t  
Mld. ntes. 11-8-62. m
- 11- 5-62 Fur evid hrd on behalf of deft in part and cause contd to Nov. 7, 1962 at 10 a.m. La Buy, J.
- 11- 7-62 Fur evid heard on behalf of deft and cause contd to Nov. 8, 1962 at 10 a.m. La Buy, J. t  
Mld. ntes. 11-9-62. m
- 11- 8-62 Fur evid hrd in part on behalf of deft and cause contd to Nov. 12, 1962 at 10 a.m. La Buy, J. t  
Mld. ntes. 11-13-62. m
- 11-16-62 On mo of plff trial of cause reset from Nov. 19, 1962 to Nov. 28, 1962. LaBuy, J. t  
Mld. ntes. 11-20-62. m
- 11-28-62 Fld Nte of Motion.

- 11-28-62 Fur evid hrd on behalf of defts. Deft rests.  
Cs contd to Nov. 29, 1962 at 10 a.m. La Buy,  
J. t  
Mld. ntes. 11-30-62. m
- 11-28-62 Enter findings of fact, concls of law and judgment order dismissing defts Clark H. Broman and Associated Food Retailers of Greater Chicago, Inc. Draft. La Buy, J. t  
Mld. ntes. 11-30-62. m
- 11-29-62 Rebuttal evid hrd on behalf of plff. Both sides rest. Plff to file brief within 20 days—answering brief 20 days and reply brief within 10 days. Proposed findings of fact & conclusions of law to be submitted & cs taken under advsmt. La Buy, J. t  
Mld. ntes. 12-4-62. m
- 12-14-62 Fld Notice & Motion. t
- 12-14-62 On mo of plff court extds time for filing brief to Dec. 29, 1962, answering brief due within twenty days and reply brief ten days thereafter. La Buy, J. t  
Mld. ntes. 12-19-62 m
- 12-27-62 Filed Notice of Appeal of plaintiff Jewel Tea Co., Inc.
- 12-27-62 Mailed copy of notice of appeal to attys.
- 12-27-62 Filed Bond on Appeal. aim 5.00 PD
- 1-23-63 Filed stipulation.
- 1-23-63 Enter order by stipulation ordered time for filing record and docketing appeal commenced by notice of appeal dated December 27, 1962 extended to and including March 25, 1963.—Campbell, J. aim  
Mld. ntes. 1-24-63. m

- 3-21-63 Filed Stipulation and copy with copies of complaint etc., attached.
- 3-21-63 By stipulation motion to permit plaintiff to use copies for record on appeal—Draft.—La Buy, J. Mailed Notice to Attys. 3-21-63.
- 3-21-63 Transmitted to U.S.C.A., Certified transcript of record. (Copy of stipulation etc., and order 3-21-63.) B
- 3-25-63 Filed Cert. copy of order entered 3-22-63 by U.S.C.A., 7th Circuit, extending the time within which appellant may file remainder of record on appeal until 40 days after the U.S.D.C. shall render judgment as to the remainder of the defendants who are not parties to appeal. (14119) B
- 3-22-63 Enter Memorandum constituting Findings of Fact and Conclusions of Law. Enter order dismissing plaintiff's complaint — Draft. — La-Buy, J. aim  
Mld. ntes. 3-25-63. m
- 4-19-63 Filed Plaintiff's notice of appeal.
- 4-14-63 Filed Bond on appeal. 5.00' pd
- 4-19-63 Mailed copy of notice of appeal to attys, for defendants. B
- 5- 6-63 Filed statement of information under Rule 12(d) of the United States Court of Appeals for the 7th Circuit by Appellees, Associated Food Retailers of Ill. et al. G
- 5- 7-63 Filed Appearance of Certain defendants-appellees, Local Unions, Nos. 189, et al., pursuant to Rule 12 (d). B
- 5-14-63 Filed Cert. copy of order entered 5-13-63 by U.S.C.A., 7th Circuit, extending time for filing remainder of record on appeal to and including May 29, 1963. B



- 5-20-63 Filed stipulation as to contents of record on appeal pursuant to Rule 12 (e) of the U.S.C.A., 7th Cir. G
- 5-23-63 Clerk's file copy of transcript of proceedings had before the Hon. Walter J. La Buy, Judge, on October 24, 25, 26, 30, 1962, and November 2, 5, 7, 8, 28, and 29 1962 filed by the Official Court Reporter 3 vols. G
- 5-24-63 Filed Stipulation with copy of amendment to complaint attached (Orig. amendment filed 10-25-62 not in file). B
- 5-29-63 Transmitted record on appeal to U.S.C.A., (Orig. Exs. and 3 vols. of Trans of Pro. under sep. cert.) B 25.55 pd

United States of America, }  
Northern District of Illinois. } ss.

I, Elbert A. Wagner, Jr. Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Docket entries in the cause entitled: Jewel Tea Co., Inc., Plaintiff vs. Local Unions Nos. 189 et al., Defendants, No. 58 C 1415.

now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois this 29th day of May, A. D. 1963.

Elbert A. Wagner, Jr.,

*Clerk,*

/s/ Gizella Butcher,

By Gizella Butcher,

*Deputy Clerk.*

1

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1415) • •

STATEMENT UNDER RULE 12(c) OF THE  
COURT OF APPEALS.

On July 29, 1958, complaint was filed and summons was issued.

Plaintiff is Jewel Tea Co., Inc., a New York corporation. Defendants are Locals 189, 262, 320, 546, 547, 571 and 638 of the Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO, and their officers, Earl Saltow, Frank Fox, Earl Heinz, Harold L. Rosa, George Flosi, Lester Ferguson, Fred Clavio, Alex M. Nielnowski, Thomas F. Gorman, R. Emmett Kelly, Mark Cantrell, Casimir Walezak, Stanley Brodzinski and William A. Stepan (Called the Union Defendants); and Associated Food Retailers of Greater Chicago, Inc., and Charles H. Bromann (called the Employer Defendants).

On October 2, 1958, the Union Defendants filed a motion to dismiss the complaint.

2 On March 31, 1959, Defendants' motions to dismiss were denied.

On May 13, 1959, the Union Defendants filed a motion to vacate the order of March 31, 1959.

On May 19, 1959, Union Defendants' motion to vacate was denied, but leave was granted for defendants to file an interlocutory appeal.

On June 19, 1959, the Court of Appeals for the Seventh Circuit granted the Union Defendants' petition to appeal.

On January 11, 1960, the Court of Appeals affirmed the District Court and remanded the cause for further proceedings (Docket No. 12653; 274 F. 2d 217).

On February 25, 1960, the Union Defendants filed a petition for certiorari in United States Supreme Court. Said

petition was denied on March 28, 1960 (October Term, 1959, Docket No. 732).

On August 1, 1962, the Union Defendants filed an answer. On August 17, 1962, the Employer Defendants filed their answer.

Commencing on October 24, 1962, the cause came on for trial before Judge Walter J. La Buy, and thereafter the trial continued on the following dates: October 25, 26, November 2, 5, 7, 8, 28 and 29, 1962.

3 On October 25, 1962, plaintiff filed an amendment to the complaint.

On October 26, 1962, at the close of plaintiff's case, defendants moved to dismiss the complaint, and on November 2, 1962, said motion was allowed as to Employer Defendants and denied as to the Union Defendants, the Court filing a memorandum opinion on that date. (Findings of fact, conclusions of law and judgment order dismissing the Employer Defendants were entered on November 28, 1962.)

On December 27, 1962, plaintiff filed a notice of appeal as to the dismissal of the complaint against the Employer Defendants (Said appeal is now in this Court as Docket No. 14119).

On March 22, 1963, the District Court entered a memorandum constituting findings of fact and conclusions of law dismissing plaintiff's complaint, and a notice of appeal from said order was filed on April 19, 1963.

/s/ George B. Christensen,  
George B. Christensen,

/s/ Fred H. Daugherty,  
Fred H. Daugherty,  
38 South Dearborn Street,  
Chicago 3, Illinois,  
*Attorneys for Plaintiff.*

## UNITED STATES DISTRICT COURT.

(Caption—58-C-1415)

## COMPLAINT.

Now comes Jewel Tea Co., Inc., a New York corporation, by its attorneys, George B. Christensen and Fred H. Daugherty, and for its causes of action against Local Unions Nos. 189, 262, 320, 546, 547, 571 and 638 of Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Earl Saltow, Frank Fox, Earl Heinz, Harold L. Rosa, George Flosi, Lester Ferguson, Fred Clavio, Alex. M. Nielubowski, Thomas F. Gorman, R. Emmett Kelly, Mark Cantrell, Casimir Walezak, Stanley Brodzinski and William A. Stepan, and Associated Food Retailers of Greater Chicago, Inc., and Charles H. Brommann, alleges:

1. This action is filed under Section 15 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15

U. S. C., Sec. 15), entitled "An Act to protect trade  
6 and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants of Sections 1 and 2 of that Act (15 U. S. C., Sec. 1, ff.), damaging to plaintiff's business and property, to obtain an award of damages for the same and/or to obtain a declaration under 28 U. S. C.; Sec. 2201, of the illegality of defendants' conduct hereinafter alleged under said Act of 1890 and/or under the common law.

2. Defendants, Local Unions Nos. 189, 262, 320, 546, 547, 571 and 638 of Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, hereinafter sometimes referred to as "locals" or "local unions," and the officers and representatives thereof, Earl Saltow, Frank Fox, Earl Heinz, Harold L. Rosa, George Flosi,



Lester Ferguson, Fred Clavio, Alex M. Nielubowski, Thomas F. Gorman, R. Emmett Kelly, Mark Cantrell, Casimir Walezak, Stanley Brodzinski and William A. Stepan, and Associated Food Retailers of Greater Chicago, Inc., and Charles H. Bromann, maintain offices and transact the businesses and activities hereinafter specified within the Eastern Division of the Northern District of Illinois, and are found therein. Each of the individual defendants is a citizen of the State of Illinois, and the amount in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars (\$10,000).

3. Plaintiff, Jewel Tea Co., Inc., sometimes herein-  
7 after referred to as "Jewel," is a corporation duly organized under the laws of and is a citizen of the State of New York. It is authorized to do business in Illinois and Indiana. Plaintiff operates 196 retail food stores in and around the Chicago, Illinois, area, including 4 stores in Northwestern Indiana. These stores have meat departments which are engaged in the retail sale of meats for human consumption, which departments are staffed by members of the defendant unions.

4. The defendants are, and they conduct the following businesses or activities:

(a) Locals 189, 262, 320, 546, 547, 571 and 638 of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, are unincorporated local trade unions or associations of individuals chartered by, and operating under the authority of Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, an International labor organization. Each of these locals maintains places of business in this judicial district. The membership of each of these locals consists of many hundreds of butchers or meat cutters who perform substantially all of the cutting and preparation of meat in all retail meat stores in the Chicago area. Said members

constitute a class so numerous as to make it impracticable to name them all as parties defendant, but defendant officers and representatives of said local unions, named below, fairly and adequately represent the members thereof. Said officers are sued herein individually and as representatives of the members of said locals as a class. Each of the locals has different geographic jurisdiction within the Greater Chicago area but together represent virtually all of the butchers in Chicago, its suburbs and certain other towns in Illinois. Retail sale of meat in any quantity substantial with relation to the population of the Greater Chicago market area and with reasonable continuity is impossible save through employment of the members of said local unions which enjoy a monopoly of persons presently trained, fitted and able to follow the occupation of butchers in the area.

(b) Earl Saltow and Frank Fox are respectively President and Secretary-Treasurer of Local 189. Earl Heinz and Harold L. Rosa are respectively President and Secretary-Treasurer of Local 262. George Flosi is a former President of Local 262, is a business agent thereof, and is a member of or participates in the work of a Joint Negotiating Committee of the local union defendants named above. Lester Ferguson and Fred Clavio are respectively President and Secretary-Treasurer of Local 320. Alex M. Nielubowski is a business agent of Locals 320 and 571 and a member of said Joint Negotiating Committee. Thomas F. Gorman is President of Local 546 and a member of said Joint Negotiating Committee. R. Emmett Kelly is Secretary-Treasurer of Local 546, Vice President of Amalgamated Meat Cutters and Butcher Workmen of North America, an International labor organization, Chairman of said Joint Negotiating Committee, and is a representative of all of said locals. Mark Cantrell is Secretary-Treasurer of Local 547 and is a member of or

participates in the work of said Joint Negotiating Committee. Casimir Walezak and Stanley Brodzinski are respectively President and Secretary-Treasurer of Local 571. William A. Stepan is President and Business Representative of Local 638.

(c) Associated Food Retailers of Greater Chicago, Inc. is a corporation organized under the not-for-profit corporation laws and is a citizen of the State of Illinois with its place of business and offices in Chicago, Illinois. Said corporation, sometimes herein called "Associated," is a trade association which has for its purposes the following:

"To maintain an association for those engaged in the business of retail food and meat distribution; to pledge its membership to the highest standards of service; to acquire, preserve and disseminate valuable trade information; to seek, in every legitimate way, the advancement of its members and, with a due regard of the public welfare, in every way to defend and preserve the principal of individual merchandising; and to promote harmony and encourage friendly intercourse among those engaged in food, grocery and meat distribution."

It represents, for the purposes of collective bargaining and negotiations with labor unions, several thousand individuals or independent food stores engaged in the retail sale of meat for human consumption in the Greater Chicago area.

(d) Charles H. Bromann is Secretary and Treasurer of Associated and from time to time conducts collective bargaining on behalf of the members of Associated with defendant locals.

10 5. Plaintiff's sales at retail of foods, meats, cosmetics, toiletries, kitchen utensils and other goods commonly sold in modern supermarkets were approximately \$285,000,000 in 1957, of which approximately \$280,000,000 was sold in this judicial district. A major part of all of said goods so sold is produced in states other than the State

of Illinois, and is shipped in interstate commerce from such other states into the Chicago area for sale there. Much of the goods sold at retail by plaintiff is purchased from suppliers in the State of Illinois who purchase said goods from out-of-state sources for resale to plaintiff and other retail food stores.

6. Plaintiff's sales of meat, poultry, fish and similar items customarily sold in meat markets were approximately \$85,000,000 in 1957.

7. There are approximately 9,000 retail food stores in the Chicago area which sell meats, fish and poultry; their annual sales of such products exceed \$5,000,000,000. Substantial portions of the meats and allied products sold by the retail food stores in the Chicago area, including those sold by plaintiff, are acquired from without the State of Illinois or are acquired from suppliers in the State of Illinois who have purchased said meats or other products, either in raw or finished state, from without the State of Illinois, intending to resell such meats and other products to meat distributors, wholesalers and retail food stores in the Chicago area. Insofar as plaintiff is concerned, 11 approximately 77.5% of such products retailed by it originate outside the State of Illinois.

8. Members of the general public ordinarily do not make their purchases of meat from packing houses and finish and dress said meats; this service is performed for them by retail meat markets which employ and supervise members of defendant unions, hereinafter sometimes referred to as "butchers," who perform this function. The service performed by retail meat markets in the Chicago area in processing, packing, wrapping, handling and selling frozen and fresh meats is an integral part, and necessary to the movement in interstate commerce of meats which are processed in states other than Illinois, and which are sold in the Chicago area. Retail meat markets are con-

duits through which meats processed and shipped from states other than the State of Illinois are sold and distributed to the consuming public in the Chicago area. The operation of retail meat markets is part of, and necessary to the movement in interstate commerce of meats developed and processed in states other than the State of Illinois and which are sold in the Chicago area.

9. Any restraint upon or disruption in, or interference in the performance with the operation of retail meat markets in the Chicago area necessarily and directly restrains and affects the interstate flow of meat and meat products, and also constitutes a direct and substantial burden and restraint upon the interstate flow of all said meat products consumed by the general public in the 12 Chicago area.

10. Modern methods of sanitation, refrigeration, display and wrapping of meats permit the operator of a meat market to have cuts of meat appropriate for retail sale cut, trimmed, and otherwise prepared for sale in advance of the customer's order. Such cuts are, and for some time have been, so prepared by members of the defendant unions in numerous of Jewel's stores. Such cuts are wrapped in sanitary, transparent cellophane or similar wrapping, are accurately marked as to weight, price and grade, and are displayed in special refrigerated cases from which customers without contact, advice or further services of any kind from the members of defendant unions may remove such pre-packaged meat as they desire, take it to the store cashier, and purchase it. The special services and skills of the members of defendant unions are not needed after the meat is cut and the only tasks they thereafter perform are to place the prepared cuts in display cases and to keep the cases clean and orderly. This system of vending meat is commonly known as the "pre-packaged, self-service" system. The "pre-packaged, self-



service" system of vending meat permits efficient utilization of the butchers' time in that it enables them to prepare a supply of popular cuts and weights free from interruptions arising from the necessities of serving individual customers and changing from task to task; it is a system favored and desired by many customers because it precludes the necessity of waiting for services of a butcher

13. during congested shopping hours. For all of the foregoing and other reasons, such system of vending meats offers operating economies that enable the market operator to sell to the public at lower prices than are required in the so-called "service system" where the butcher waits for each individual customer's order and then prepares the desired cut.

11. Plaintiff respectfully shows that under the "pre-packaged, self-service" system of vending meat a butcher need not be on duty in the store at the time the customer selects his or her desired cut of meat and actually makes the purchase; that the packaged cuts of meat can be, and are, safely and properly stored, displayed and made available for customer selection and self-service in refrigerated condition so that there is no necessity for members of the defendant unions being on duty in plaintiff's stores at all hours at which meats are actually purchased by customers; that the incidental tasks of arranging the cuts in the cases and cleaning the cases need not be performed continuously throughout store hours and can be performed by others or can be performed by butchers some hours prior to the ending of store hours.

12. Plaintiff shows that in the Chicago area there are thousand of households in which both the husband and wife are gainfully employed during the daytime of Monday through Friday of each week so that the only convenient time for the husband or wife in such households to shop is on Saturdays; that in many of such households cus-

14   tomers desire, and should be able to purchase meat more often than once a week, and desire, and should be able to do so during one or more of the evenings of Monday through Friday. There are thousands of additional households so situated with respect to food stores in the area that it is virtually essential that an automobile be utilized for shopping; an many of such households the family automobile is not available during normal daylight shopping hours Monday through Friday because it is necessary for the husband of the family to use it in connection with his work; such families greatly desire, and should be able to purchase meat in the evenings of one or more of the days Monday through Friday each week. For the foregoing and other reasons there is widespread public demand in the Chicago area that meat be available for retail purchase at Jewel stores during one or more evenings of the week. A survey conducted by plaintiff among a representative cross-section of nearly 20,000 of its customers discloses that approximately 90% of them desire to be able to purchase fresh meats on one or more evenings per week.

13. Plaintiff shows that conditions similar to those above alleged prevail in many of the metropolitan centers of the country and have led in most metropolitan areas other than Chicago to the evening sale of meat through the pre-packaged, self-service system. There are no reasons of health, sanitation or public convenience against such system of evening sale of meats whether the same be  
15   with, or without, the presence of butchers on the premises involved. Plaintiff shows that in many of these areas the butchers who cut and prepare in advance the meat so sold through the pre-packaged, self-service system in the evening are members of other local unions of the Amalgamated Meat Cutters and Butcher Workmen of North America.

14. Jewel has approximately 174 stores in the Chicago area presently equipped for the pre-packaged, self-service system of vending meats, and would vend meats in all or most of them one or more evenings a week but for the illegal conspiracy hereinafter alleged, which has the effect of stifling all competition in the sale of most meats for human consumption except between the hours of 9:00 A.M. to 6:00 P.M. Mondays through Saturdays and of denying the public access to the retail market except during such restricted hours.

15. Beginning at least 10 years ago and continuing thenceforth, defendants and their co-conspirators, and others to the plaintiff unknown, have engaged in an unlawful combination and conspiracy to suppress competition among retail meat markets in the Chicago area and to wholly prevent the sale of meat and meat products before 9:00 A.M. or after 6:00 P.M. Mondays through Saturdays, and except during said restricted hours, in unreasonable restraint of trade and commerce among the several states in violation of Section 1, and to monopolize or attempt to monopolize for the members of the defendant unions the retail portion of the trade or commerce in meats in violation of Section 2 of the Sherman Act.

16. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants and their co-conspirators, the substantial terms of which have been that they agree:

- (a) That no person or firm be permitted to engage in the retail sale of fresh beef, veal, lamb, mutton or pork before 9:00 A.M. or after 6:00 P.M.
- (b) That defendant locals and their officials and representatives named herein refuse to allow members of their organizations to sell fresh beef, veal, lamb, mutton or pork at retail before 9:00 A.M. or after 6:00 P.M.

- (c) That no person or firm be permitted to sell fresh beef, veal, lamb, mutton or pork at retail before 9:00 A.M. or after 6:00 P.M. with or without the employment of members of defendant unions outside those hours.
  - (d) The co-conspirator members of defendant Associated have agreed among themselves to insist that all collective bargaining agreements entered into between them and defendant unions or between defendant unions and plaintiff or other operators of food stores shall contain provisions prohibiting the sale at retail of fresh beef, veal, lamb, mutton or pork before 9:00 A.M. and after 6:00 P.M.
- 17 (e) Associated, its members and officers have conspired and agreed with the other defendants that neither plaintiff nor any other merchandiser is to be permitted to compete lawfully with them by operating self-service meat markets between the hours of 6:00 P.M. and 9:00 P.M.
- (f) That defendant unions, their officers and members have acted as the enforcing agent of the conspiracy.
17. Defendants and their co-conspirators, by agreement and concert of action, have done the things which, as hereinbefore alleged they conspired to do, and, more particularly, have done, among others, the acts and things hereinafter described.
18. For many years past defendant unions, their officers and members, conspiring together with Associated, Bromann, and Associated's employer members, have insisted that all collective bargaining agreements entered into between the unions and operators of retail meat markets in the Chicago area be identical, and have insisted that the

bargaining between all such operators (or their representatives) and the unions be carried on simultaneously and have exercised their monopoly powers to effectuate that insistence.

19. For many years past defendant Associated and its co-conspirator members and Bromann and the defendant unions, their officers and members, have insisted, despite public demand and interest to the contrary,

18 that contracts between defendant unions and all operators of retail meat markets contain provisions prohibiting the retail sale of meat after 6:00 P.M. and have exercised the unions' monopoly powers to effectuate that insistence.

20. In furtherance of this conspiracy, in 1957, when plaintiff and other operators of retail meat markets had collective bargaining agreements with defendant unions which expired on October 5, 1957, the defendant unions summoned all such operators, including plaintiff, to meetings for the purpose of negotiating new agreements. From the outset of these negotiations plaintiff pointed out to defendants that it considered a restriction on its hours of operation illegal and a restraint of trade, and that plaintiff was ready, willing and able to operate its self-service meat markets after 6:00 P.M. on one or more nights a week without requiring any members of defendant unions to work such hours. Defendant Associated refused to enter into an agreement permitting night openings and the defendant unions supported and abetted it in that refusal.

21. Defendant unions threatened to strike and picket any operator who refused to sign a contract which banned evening sales of meat and plaintiff believed, and alleges, that such strike threat was made with authorization of the members of the several unions and would have been carried into effect against Jewel had it not yielded. Plaintiff  
19 shows that it could not have operated its meat departments without the services of numerous members of



the defendant locals (approximately 1,300) normally employed by it. Plaintiff further shows that such a strike and picketing would have inflicted great and severe damage upon it and would, in many areas, have caused great public inconvenience because other unions engaged in delivering and servicing perishable products such as milk, produce, bread, etc., would have honored such picket lines and plaintiff within a short time would have been unable to offer either such products or meats for sale, and many buyers would have been compelled to travel unnecessary distances to obtain such products. Under the compulsion of the conspiracy and the foregoing circumstances plaintiff was forced to sign in late January and early February 1958 contracts with defendant locals which collectively cover all of its stores, sample copies of which are attached hereto, marked Exhibits "1" and "2" and made a part hereof. Each of said contracts contains the following provisions:

"Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above."

Each of such contracts extends to October 3, 1959.

22. On or about May 13, 1958, defendant Kelly caused a meeting of sundry officials of defendant locals to be held with representatives of numerous market operators in the area, including plaintiff, for the purpose of announcing that he and the other defendants had learned that in several instances markets had operated after 6:00 P.M., and that if future instances occurred Kelly and the particular local union that might be involved would not proceed under the arbitration provisions of the particular contract that might be involved but would "pull," i.e., remove, the butchers from service from such store or stores for such period of time as they felt necessary to secure future obedience to the hours restriction provisions of the

*Complaint.*

contract. Plaintiff shows that said announcement is a strike threat, that it has not been withdrawn and that it verily believes defendants are prepared to and would carry out said threat if plaintiff operated any of its meat departments after 6:00 P.M.

23. The effects of the aforesaid combination and conspiracy, among others, have been as follows:

- (a) The right of plaintiff to sell fresh beef, veal, lamb, mutton and pork at reasonable hours has been unlawfully restrained and impeded.
- (b) The public has been denied the benefits of competition among retail meat dealers in the Chicago area free from illegal restraints.
- (c) The flow in interstate trade and commerce of meats and meat products has been unlawfully restrained.
- (d) Plaintiff has been restrained from utilizing its right to full use of its own property and facilities without hindrance by illegal restraints.
- (e) The costs of meats at retail in the Chicago area has been held higher than it otherwise would be.
- (f) Plaintiff has lost profits in a large amount, difficult to ascertain exactly but in excess of \$25,000, which it would have gained in the absence of defendants' unlawful conduct.

Wherefore, plaintiff prays:

1. That the Court adjudge, decree and declare that the aforesaid combination and conspiracy entered into by the defendants, and all acts done pursuant thereto, constitute an unlawful restraint of trade and commerce.

2. That the defendants, and each of them, and their directors, officers, agents, employees, and members be enjoined from continuing, renewing or reviving the unlawful

combination and conspiracy hereinbefore alleged or any combination or conspiracy having a similar purpose or effect.

3. That the restriction on hours in which plaintiff may serve the public be declared illegal, null and void, and that defendants be enjoined from enforcing said restriction in Exhibits 1 and 2 hereto or any other rule, contract, or restriction having a similar effect or purpose.

4. That the defendants, and each of them, be enjoined from harassing, intimidating, hindering, striking, or picketing plaintiff for the purpose of restricting plaintiff's 22 hours of operation.

5. That plaintiff be awarded treble damages in the total amount of \$75,000 and costs and attorneys' fees.

6. That plaintiff have such other and further relief as the nature of the case may require and the Court may deem appropriate.

George B. Christensen,  
Fred H. Daugherty,  
*Attorneys for Plaintiff.*

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Financial 6-3600,  
*Of Counsel.*

1957-59

**Amalgamated Meat Cutters and Butcher Workmen  
of North America—AFL-CIO**

Local 262

1896 Sheridan Road, Highland Park, Illinois

Idlewood 2-3316

Affiliated with the:

AFL-CIO

Harold L. Rosa

Secretary-Treasurer

Illinois Federation of Labor

Central Labor Council

**Service Contract.**

**Amalgamated Meat Cutters and B. W. of N. A., AFL-CIO.**

Articles of Agreement governing Service Meat Markets in parts of Lake County and County of Cook, entered into between Jewel Tea Co., Inc. hereinafter called the "Employer," all meat markets and chain store meat markets, all combination Grocery and Meat Markets in parts of Lake County and Cook County; and the Amalgamated Meat Cutters and Butcher Workmen of North America, Local 262 (AFL-CIO) acting as the Collective Bargaining Agent for its members. This Contract approved and passed by the International Executive Board at the General Office the 2nd day of December, 1957.

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## Article 1. General.

Section 1. Consideration. For and in consideration of the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which is hereby acknowledged, this Agreement is entered into.

Section 2. Scope of Contract. It is agreed that this Contract shall govern the hours, wages and other conditions of employment of Employer's meat department employees in Service Meat Markets only within the geographical jurisdiction of Local 262, and that the hours, wages and other conditions of employment of Employer's meat  
24 department employees in Self-Service Meat Markets are covered by a separate contract. It is further agreed that the Employer shall have the sole discretion of determining from time to time which system of merchandising, service or self-service, shall be utilized in each of the Employer's markets; provided that the Employer shall comply with the wages, hours and other contractual conditions of employment pertaining to the system of merchandising used in that market.

## Section 3. Definitions.

(a) Apprentice: An apprentice is an employee who is in training to become a Journeyman butcher. Apprentices must be at least sixteen (16) years of age.

(b) Journeyman: After serving three (3) years of apprenticeship, an employee shall be classified as a Journeyman meat cutter and shall receive the Journeyman rate of pay.

(c) Head Meat Cutter: The term "Head Meat Cutter" means a Journeyman meat cutter who is responsible for the efficient management of the market.

(d) Self-Service and Service: A self-service market is one in which fresh beef, veal, lamb, mutton or pork are

available for sale on a pre-package self-service basis. It is agreed that any market which is operated on a partially service and partially self-service basis shall be classified as a self-service market if any fresh beef, veal, lamb, mutton or pork are made available for sale on a pre-package self-service basis, even though there is also a service counter offering custom cutting for those who prefer it. Such semi-self-service market shall be considered a self-service market subject to the terms and conditions and wage scale contained in the Self-Service Contract.

If no fresh beef, veal, lamb, mutton or pork are sold on a self-service basis, then the market is a Service Market and shall be operated in accordance with this Service Contract. It is further expressly understood and agreed that if all fresh beef, veal, lamb, mutton and pork sold by a market are handled and sold on a service basis only, the fact that a market handles and sells on a self-service basis, delicatessen and other meat products now excepted from the jurisdiction of the Union under this Service Contract shall not operate to classify such market as a self-service market; but such semi-self-service market shall nevertheless be considered a service market subject only to the wage scales, hours and other conditions provided in this Service Contract.

In the event of any dispute as to whether a meat market shall be classed as a service market subject to the terms and conditions of this Service Contract or a self-service market subject to the terms and conditions of the Self-Service Contract, the decision of the Union shall be binding unless and until said decision has been set aside by any arbitration proceedings; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.

Section 4. Notices. All notices required under this Contract shall be deemed to be properly served if delivered in

writing personally or sent by certified mail to the offices of the Union at 1896 Sheridan Road, Highland Park, Illinois, or to the Employer at the address designated below, or to any subsequent address which the Union or the Employer may designate in writing for such purpose. Date of service of a notice served by mail shall be the date on which such notice is post-marked by a post-office of the United States Post Office Department.

Section 5. Partial Invalidity. Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed to be in such violation, then that part shall be made null and void and the parties agree that they will immediately begin negotiations to replace said void part with a valid provision.

Section 6. Authority of Signing Parties. The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

Section 7. Successors and Assigns. This Agreement shall be binding upon the Employer herein and its successors and assigns.

## Article 2. Jurisdiction.

The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said Employer on their premises; including those workers processing, packing, wrapping and selling frozen fresh meats.

The parties agree that all fish, poultry, rabbits, meats and its kindred products, fresh or frozen, except:

- (a) sliced boiled, baked or barbecued ham;
- (b) sliced packaged bacon;
- (c) sliced packaged dried beef;

- (d) sliced packaged Canadian bacon;
- (e) smoked sausage, smoked butts, smoked ribs and smoked hocks;
- (f) canned and glassed meats of all kinds;
- (g) all ready-to-eat prepared meats, poultry, and fish;
- (h) frozen packaged fish;
- (i) frozen specialty meat items such as frozen and formed (flaked or shopped) patties and choppettes, with or without butter or vegetable, breaded or unbreaded;
- (j) All meats Not for human consumption;

will be sold, cut, prepared and fabricated by meat department employees, and said cutting, preparing, fabricating and packaging of above products into retail cuts will be done on the premises or immediately adjacent thereto.

Frozen fresh poultry, cut-up or whole, fresh pork sausage, the frozen specialty meat items described above and vacuum or comparably tight wrapped ham slices, shanks, and butts may be prepared by the packer, supplier, or employer off the premises. Frozen fresh poultry, fresh poultry (cut-up or whole) processed on the premises, fresh pork sausage and the frozen meat specialty items described above may be sold from self-service cases after the market hours prescribed in Article V; provided, however, that such products are priced or prepriced by meat department employees on the premises.

25.

## Article 3. Wages.

Section 1. Wage Rates—Weekly, Extra Day and Over-time. Not less than the following wages shall be paid to service market employees during the term of this Contract:

	Minimum Weekly Wage for Basic Workweek	Extra Day Full Day	Rates Half Day	Overtime Rates*
(a) First Contract Year 10/6/57 thru 10/4/58				
Head Meat Cutter.....	\$111.50	\$24.30	\$12.15	\$4.18 (25)
Journeyman .....	105.00	23.00	11.50	3.93 (75)
Apprentices				
0 to 6 Months.....	72.00	16.40	8.20	2.70
6 to 12 Months.....	75.00	17.00	8.50	2.8125
12 to 18 Months.....	78.00	17.60	8.80	2.925
18 to 24 Months.....	81.00	18.20	9.10	3.0375
24 to 36 Months.....	86.00	19.20	9.60	3.225
(b) Second Contract Year 10/5/58 thru 10/3/59				
Head Meat Cutter.....	\$117.50	\$25.50	\$12.75	\$4.4075
Journeyman .....	111.00	24.20	12.10	4.1625
Apprentices				
0 to 6 Months.....	75.00	17.00	8.50	2.8125
6 to 12 Months.....	78.00	17.60	8.90	2.925
12 to 18 Months.....	81.00	18.20	9.10	3.0375
18 to 24 Months.....	84.00	18.80	9.40	3.15
24 to 36 Months.....	89.00	19.80	9.90	3.3375

\* Overtime hourly rates may be rounded off to the nearest quarter-cent, half-cent or whole cent, depending on the Employer's payroll practice.

Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

Section 2. Payment of Extra Day Rates. The extra day and half day rates shall be paid whenever an employee works the sixth (6th) day of a regular workweek or the fifth (5th) day of a holiday week. These rates provide a \$2.00 premium over the average daily rate for a full day and a \$1.00 premium over the average for a half day.

In the event state or federal legislation is enacted during the term of this contract which requires the payment of time and one-half regular hourly rates of pay for all work



performed in excess of forty (40) hours in a workweek, then effective on the date such law shall become effective such payment of extra day rates and said extra day rate provision shall cease to have any further effect.

Section 3. Extra Help. Extra help shall be paid at the Journeyman extra day rates set out above except in the event that they work the full week when they are to receive the minimum weekly wage set out above for their classification.

#### Article 4. Working Hours and Other Conditions of Employment.

Section 1. Basic Workday. Eight (8) hours shall constitute the basic workday, Monday through Saturday; work to begin at 9:00 a.m. and stop at 6:00 p.m., allowing one hour for lunch, said hour to begin no earlier than 11:00 a.m. nor end later than 2:00 p.m. This is to apply to all markets whether manned by one or more than one employee. Employees must be dressed and ready for work at 9:00 a.m. Monday through Saturday.

Section 2. Basic Workweek. Five (5) days shall constitute the basic workweek, to be worked Monday through Saturday, with one full day off within each shop, for each employee at the Employer's discretion. The day off shall be rotated or changed in accordance with the mutual agreement of the Employer and his employees.

Section 3. Sixth Day Guarantee. Any employee called to work on the sixth (6th) day in any regular workweek, shall be guaranteed four (4) hours' work. Reporting time on the sixth (6th) day shall be either 9:00 a.m. or 2:00 p.m. Head Meat Cutters and Journeymen shall be given preference over Apprentices for work on the sixth (6th) full or half day during a regular workweek and on the fifth (5th) full or half day during a holiday week.

Section 4. Overtime: Overtime may be worked behind locked doors at overtime rates from 8:00 a.m. to 9:00 a.m., after 6:00 p.m., and after eight (8) hours in any one day, at the Employer's discretion.

Section 5. Inventory. Employees shall not take inventory outside of regular working hours.

Section 6. Restrictions on Apprentices. Apprentices may be employed at a ratio of not exceeding two (2) for each five (5) Journeymen employed by the Employer within the jurisdiction of the Local. A quarterly report covering the number of Apprentices employed in relationship to the number of Journeymen shall be furnished the Union. Apprentices shall not work part time or as extra men on Saturdays or the day preceding holidays.

Section 7. Tools. Laundry, tools and sharpening of tools are to be furnished free of cost by Employer.

26 Section 8. Clean-up Time. It is expressly understood that no customer shall be served who comes into the market before or after the hours set forth in Article 5, that all customers in the market at the closing hour shall be served, that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen (15) minutes and not to be construed as overtime. Such clean-up time shall not be utilized to prepare for the following day's business and shall not be accumulative from day to day.

Section 9. Rest Periods. Each employee shall have two 10-minute rest periods daily, the first to be taken approximately mid-way in the morning and the second to be taken about midway in the afternoon.

**Article 5. Market Operating Hours.**

Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above, except that customers in the market at the closing hour shall be served.

**Article 6. Holidays, Vacations and Other  
Compensable Absences.**

**Section 1. Holidays.** There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday, it shall be made a part of this Article.

Employees who are absent the regularly scheduled work-day before, or after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day during a holiday week, he shall be paid the extra day or half day rates set out in Article 3.

It is agreed that the Head Meat Cutters and Journeymen will be given preference over Apprentices for work on the sixth (6th) full or half day during a regular work-week, and on the fifth (5th) full or half day during a holiday week.

**Section 2. Vacations.** Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After two (2) years of service he shall be entitled to two (2) weeks' vacation with pay. Effective January 1, 1958, all employees having ten (10) years of continuous full-time service shall be entitled to

three (3) weeks of vacation with pay. Unless otherwise mutually agreed upon between Employer and employee, vacation weeks shall be taken consecutively. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters. In case of dispute the matter shall be referred to arbitration, as provided for in Article 7.

Whenever a holiday listed in Section 1 of this Article falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the Employer's option.

Section 3. Absences Due to Injuries. Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such workweek, provided, however, that the employee shall report upon receipt of the injury to the Employer's physician whose decisions with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the Employer shall receive credit for any payment made under this provision should compensation be awarded by the Industrial Commission of Illinois.

#### Article 7. Union-Management Relations.

Section 1. Union Employees. The Union, if requested, will furnish men, insofar as they are available, who will work to the best interest of the Employer in every way, just and lawful, who will give honest and diligent service to patrons of the Employer's establishment, and who will do everything within their power for the uplifting of the meat industry.

**Section 2. Union Shop.** The Employer agrees to employ and keep in employment only such persons who, thirty (30) days after the effective date hereof or thirty (30) days after commencement of employment, whichever is later, are, thereafter continue to remain, members in good standing of said Union. The Employer agrees htat, upon written notice from the Union, it will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

**Section 3. Union Preference.** When permitted by law, the Employer agrees that when in need of help he will give preference to members in good standing in the Union.

**Section 4. Business Representatives.** Union Business Representatives shall be admitted to the Employer's market premises during the hours meat department employees are working for the purpose of ascertaining whether or not this Agreement is being observed and for collecting dues. Such activities shall be conducted in such a manner as not to interfere with the orderly operation of Employer's business. Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the wage scale fixed herein.

**Section 5. Discharge.** No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men-in replacing help.

**Section 6. Display of Contract and Union Shop Cards.** This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

27 It will be the duty of the Employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall re-



main the property of the Union, and the Employer shall have their usage only until such time as the Union shall request their return. The Employer agrees to surrender same immediately upon demand by the Union.

**Section 7. Grievances and Arbitration.** All grievances which cannot be adjusted by the Union and the Employer shall be referred to an Arbitration Board consisting of two (2) members to be named by the Union, two (2) by the affected Employer and one to be agreed upon by the four (4) already selected.

No strike, cessation of work, picketing, boycott or lock-out is to occur when arbitration has been requested by either party, provided that the dispute has been heard and decided within a thirty (30) day period from submission.

Grievances of any nature must be made within forty-five (45) calendar days after the cause giving rise to the grievance becomes evident; and wage claims shall not be valid and collectible for a period earlier than ninety (90) days prior to the date of filing the grievance or the date the grievance arose, whichever date is most recent.

**Section 8. Withdrawal Cards.** Any member of Local 262 who is in good standing and is in business for himself who may desire to affiliate with the ..... may apply for a withdrawal card, provided the request be accompanied by the similar request from the ..... Withdrawal card may be obtained upon application to the Executive Board of Local 262.

### **Article 8. Term.**

**Section 1. Initial Term.** This Agreement shall become effective at 12:01 a.m., October 6, 1957, and shall expire at 12:00 midnight, October 3, 1959.

**Section 2. Renewal Term.** If either party wishes to modify this Agreement at its expiration, it shall serve notice in writing of such request upon the other party not

less than sixty (60) days prior to the expiration date. In the absence of the service of such notice, this Contract shall automatically renew itself for a period of one year and from year to year thereafter, it being further agreed that the Contract expiration date shall be the first Saturday in October of each year.

Section 3. Retroactivity. This Contract shall remain in full force and effect until a new agreement is negotiated, but not beyond an additional sixty (60) days beyond the Contract expiration date. Any increases in wages set out in Article 3 resulting from the negotiations following the Contract expiration date shall be retroactive to the date of expiration, but not exceeding ninety (90) calendar days, whichever period shall be shorter. There shall be no retroactivity with respect to other contract changes, such as changes in working hours or premium or overtime pay.

Executed at Highland Park, Illinois, this 24th day of January, 1958.

Local 262, Amalgamated Meat Cutters  
and Butcher Workmen of North  
America, AFL-CIO.

By Alan J. Peterson,

*President.*

By Harold L. Rosa,

*Secretary-Treasurer.*

Employer Jewel Tea Co., Inc.

By E. T. Vorbeck,

*E. T. Vorbeck, Assistant Secretary.*

Employer's Address 1955 West North Avenue,  
Melrose Park, Illinois.

1957-59

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**Amalgamated Meat Cutters and Butcher Workmen  
of North America—AFL-CIO**

Locals 320-571

**Fred Clavio**  
Sec'y-Treas. Local 320

**Alex Nielubowski**  
Business Representative

**Stanley Brodzinski**  
Sec'y-Treas. Local 571  
10615 South Halsted Street

**Self-Service Contract.**

**Amalgamated Meat Cutters and B. W. of N. A.,  
AFL-CIO.**

Articles of Agreement governing Self-Service Meat Markets in the City of Chicago and County of Cook, entered into between Jewel Tea Co., Inc., hereinafter called the Employer, and the Amalgamated Meat Cutters and Butcher Workmen of North America, Locals 320-571 (AFL-CIO), hereinafter sometimes referred to as the Union, acting as the exclusive collective bargaining agent for all employees covered by this Agreement. This contract approved and passed by the International Executive Board at the General Office the 2nd day of December, 1957.

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**Term**

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**Article 1. General.**

**Section 1. Scope of Contract.** It is agreed that this Contract shall govern the hours, wages and other conditions of employment of Employer's meat department employees in Self-Service Meat Markets only within the geographical jurisdiction of Locals 320-571 and that the hours, wages and other conditions of employment of Employer's meat department employees in Service Meat Markets are covered by a separate contract. It is further agreed that the employer shall have the sole discretion of determining from time to time which system of merchandising, service or self-service, shall be utilized in each of the Employer's markets; provided that the Employer shall comply with the wages, hours and other contractual conditions of employment pertaining to the system of merchandising used in that market.

**Section 2. Definitions.**

(a) **Apprentice:** An apprentice is an employee who is in training to become a Journeyman butcher. Apprentices must be at least sixteen (16) years of age.

(b) **Journeyman:** After serving three (3) years of apprenticeship, an employee shall be classified as a Journeyman meat cutter and shall receive the Journeyman rate of pay.

(c) **Head Meat Cutter:** The term "Head Meat Cutter" means a Journeyman meat cutter who is responsible for the efficient management of the market.



(d) **Self-Service and Service:** A self-service market is one in which fresh beef, veal, lamb, mutton or pork are available for sale on a pre-package self-service basis. It is agreed that any market which is operated on a partially service and partially self-service basis shall be classified as a self-service market if any fresh beef, veal, lamb, mutton or pork are made available for sale on a pre-package self-service basis, even though there is also a service counter offering custom cutting for those who prefer it. Such semi-self-service market shall be considered a self-service market subject to the terms and conditions and wage scale contained in this Self-Service Contract.

If no fresh beef, veal, lamb, mutton or pork are sold on a self-service basis, then the market is a Service market and shall be operated in accordance with the Service Contract. It is further expressly understood and agreed that if all fresh beef, veal, lamb, mutton and pork sold by a market are handled and sold on a service basis only, the fact that a market handles and sells, on a self-service basis, delicatessen and other meat products now excepted from the jurisdiction of the Union under the Service Contract shall not operate to classify such market as a self-service market; but such semi-self-service market shall nevertheless be considered a service market subject only to the wage scales, hours and other conditions provided in the Service Contract.

In the event of any dispute as to whether a meat market shall be classed as a service market subject to the terms and conditions of the Service Contract or a self-service market subject to the terms and conditions of this Contract, the decision of the Union shall be binding unless and until said decision has been set aside by any arbitration proceedings had pursuant to the terms of this Contract; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.

**Section 3. Notices.** All notices required under this Contract shall be deemed to be properly served if delivered in writing personally or sent by certified mail to the offices of the Union at 10615 South Halsted Street, Chicago, Illinois, or to the Employer at the address designated below, or to any subsequent address which the Union or the Employer may designate in writing for such purpose. Date of service of a notice served by mail shall be the date on which such notice is post-marked by a post-office of the United States Post Office Department.

**Section 4. Partial Invalidity.** Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed by a court or board of competent jurisdiction to be in such violation, then that part shall be made null and void, the remainder of the Contract shall continue in full force and the parties will immediately begin negotiations to replace the void part with a valid provision.

**Section 5. Authority of Signing Parties.** The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

**Section 6. Successors and Assigns.** This agreement shall be binding upon the Employer herein and its successors and assigns.

## **Article 2. Jurisdiction.**

**Section 1. Recognition.** The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all employees in the meat department of said Employer who process, pack, wrap, handle and sell frozen and fresh meats on Employer's premises, and that it will not negotiate with any but the duly elected officers of the Union nor contract with anyone not affiliated with the Union.

**Section 2. Processing.** In Self-Service markets members of the Union shall perform all cutting, preparing,

fabricating, handling and packaging into retail cuts of all fresh fish and rabbits and all fresh or frozen beef, veal, pork, lamb and mutton, said work to be done only on the premises or immediately adjacent thereto; provided, however, that frozen specialty meat items such as the items enumerated in Section 3—Item 6 below, frozen fresh poultry, cut-up or whole and vacuum or comparably tight-wrapped ham slices, shanks and butts may be prepared by the packer, supplier or employer off the premises.

**Section 3. Sale.** In self-service markets members of the Union shall have the exclusive jurisdiction over the sale of all fish, poultry, rabbits and meat, whether frozen fresh or fresh, and delicatessen meats, except sliced packaged bacon, sliced packaged Canadian bacon, canned and glassed meats of all kinds and all meats not for human consumption. The following meats subject to the Union's jurisdiction over sale may nevertheless be sold from self-service cases after the market hours set out in Article 5 provided that Union members stock the cases before 6:00 p.m.

- (1) All delicatessen meats including:
  - (a) Ready to eat prepared meats, poultry and fish;
  - (b) Sliced boiled, baked or barbecued ham;
  - (c) Sliced packaged dried beef;
  - (d) Smoked Sausage;
  - (e) Fresh pork sausage.
- (2) Frozen fresh poultry, cut up or whole;
- 30 (3) Fresh poultry, cut-up or whole, processed on the premises;
- (4) Frozen packaged fish;
- (5) Smoked butts, smoked ribs and smoked hocks;
- (6) Frozen specialty meat items such as frozen and formed (flaked or chopped) patties and choppettes, with or without butter or vegetable, breaded or unbreaded.

## Article 3. Wages.

Section 1. Wage Rates—Weekly, Extra Day and Overtime. Not less than the following wages shall be paid during the term of this Contract:

	Minimum Weekly Wage for Basic Workweek	Extra Day Full Day	Rates Half Day	Overtime Rates*
(a) First Contract Year 10/6/57 thru 10/4/58				
Head Meat Cutter.....	\$114.50	\$24.90	\$12.45	\$4.295
Journeyman .....	108.00	23.60	11.80	4.05
Apprentices				
0 to 6 Months.....	72.00	16.40	8.20	2.70
6 to 12 Months.....	75.00	17.00	8.50	2.81 (25)
12 to 18 Months.....	78.00	17.60	8.80	2.925
18 to 24 Months.....	81.00	18.20	9.10	3.0375
24 to 36 Months.....	86.00	19.20	9.60	3.225
(b) Second Contract Year 10/5/58 thru 10/3/59				
Head Meat Cutter.....	\$119.50	\$25.90	\$12.95	\$4.4825
Journeyman .....	113.00	24.60	12.30	4.23 (75)
Apprentices				
0 to 6 Months.....	75.00	17.00	8.50	2.81 (25)
6 to 12 Months.....	78.00	17.60	8.80	2.925
12 to 18 Months.....	81.00	18.20	9.10	3.0375
18 to 24 Months.....	84.00	18.80	9.40	3.15
24 to 36 Months.....	89.00	19.80	9.90	3.3375

\* Overtime hourly rates may be rounded off to the nearest quarter-cent, half-cent or whole cent, depending on the Employer's payroll practice.

Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

Section 2. Payment of Extra Day Rates. The extra day and half day rates shall be paid whenever an employee works the sixth (6th) day of a regular workweek or the fifth (5th) day of a holiday week. These rates provide a \$2.00 premium over the average daily rate for a full day and a \$1.00 premium over the average for a half day.

In the event state or federal legislation is enacted during the term of this contract which requires the payment of time and one-half regular hourly rates of pay for all

work performed in excess of forty (40) hours in a work-week, then effective on the date such law shall become effective such legislative requirement shall replace the above provision requiring the payment of extra day rates and said extra day rate provision shall cease to have any further effect.

**Section 3. Extra Help.** Extra help shall be paid at the Journeymen extra day rates set out above, except in the event that they work the full week when they are to receive the minimum weekly wage set out above for their classification.

#### **Article 4. Working Hours and Other Conditions of Employment.**

**Section 1. Basic Workday.** Eight (8) hours shall constitute the basic workday. Work shall begin at 9:00 a.m. and shall cease at 6:00 p.m. One hour shall be allowed for lunch in all markets whether manned by one or more employees, said lunch hour to begin no earlier than 11:00 a.m. and to end no later than 2:00 p.m. There shall be no clean-up time after 6:00 p.m. except clean-up may be performed after 6:00 provided that overtime is paid for all work performed after 6:00 p.m.

**Section 2. Basic Workweek.** Five (5) basic workdays (40 hours) shall constitute the basic workweek which shall be worked—Monday through Saturday, inclusive. One full day off within the week of Monday through Saturday, inclusive, shall be allowed each employee in each shop. The day off shall be at the Employer's discretion except that it may be rotated or changed in accordance with the mutual agreement of the Employer and his employees.

**Section 3. Sixth Day Guarantee.** Any employee called to work on the sixth (6th) day in any regular workweek shall be guaranteed four (4) hours ( $\frac{1}{2}$  day) of work. Reporting time on the sixth (6th) day shall be either 9:00 a.m.



or 2:00 p.m. It is agreed that the Head Meat Cutters and Journeymen shall be given preference over Apprentices for work on the sixth (6th) full or half day during a regular workweek, and on the fifth (5th) full or half day during a holiday week.

Section 4. Overtime. Overtime at overtime rates may be worked behind locked doors from 8:00 a.m. to 9:00 a.m., after 6:00 p.m., and after eight (8) hours in any one day, at the Employer's discretion.

Section 5. Inventory. Employees shall not take inventory outside of regular working hours.

31 Section 6. Restrictions on Apprentices: Apprentices may be employed at a ratio of not exceeding two (2) for each five (5) Journeymen employed by the Employer within the jurisdiction of the Local. A quarterly report covering the number of Apprentices employed in relationship to the number of Journeymen shall be furnished the Union. The Employer agrees to rotate all Apprentices in his markets so as to give them sufficient, well-rounded experience to qualify them as Journeymen at the end of the three (3) year apprenticeship period. Apprentices shall not work part time or as extra men on Saturdays or the day preceding holidays.

Section 7. Tools: Packaging Equipment Restriction. Laundry, tools and sharpening of tools shall be furnished free of cost by Employer.

The kinds of saws, power saws, conveyors, sealing irons, sealing plates, staplers, recording and printing sealers for weighing, vacuum sealing equipment and other tools which the Employer may use shall be determined by the Employer; provided, however, that the Employer shall neither install nor use any automatic packaging equipment not now being used by the Employer, except vacuum sealing equipment, without first securing the Union's approval; it being understood, however, that the Union has approved the installation and use of semi-automatic sealing equipment.

By semi-automatic sealing equipment is meant sealing equipment in which the first application of packaging material and also the first seal is made manually. The functions performed by such semi-automatic sealing equipment shall not be enlarged or extended without the prior approval of the Union.

Section 8. Rest Period. Each employee shall have two (2) rest periods of ten (10) minutes each to be taken daily at the following times: Cutting Room Employees, 10:00 a.m. to 10:10 a.m. and 3:00 p.m. to 3:10 p.m.; Packaging Room Employees including Employees Servicing the Self-Service Counters, 10:10 a.m. to 10:20 a.m. and 3:10 p.m. to 3:20 p.m.

#### Article 5. Market Operating Hours.

Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above. In those stores in which the grocery departments remain open after 6:00 p.m. only the following products may be sold after 6:00 p.m.:

- (1) Sliced packaged bacon and Canadian bacon, canned and glassed meats of all kinds, and all meats not for human consumption (being those products excepted from the Union's jurisdiction over sale);
- (2) All delicatessen meats including:
  - (a) Ready to eat prepared meats, poultry and fish;
  - (b) Sliced boiled, baked or barbecued ham;
  - (c) Sliced packaged dried beef;
  - (d) Smoked sausage;
  - (e) Fresh pork sausage.
- (3) Frozen fresh poultry, cut-up or whole;
- (4) Fresh poultry, cut-up or whole, processed on the premises;

*Complaint.*

- (5) Frozen packaged fish;
- (6) Smoked butts, smoked ribs and smoked hocks;
- (7) Frozen specialty meat items such as frozen and formed (flaked or chopped) patties and choppettes, with or without butter or vegetable, breaded or unbreaded.

The parties agree that in the event the market operating hours of service markets are extended at any time during the term hereof the extension shall likewise apply to the market operating hours of self-service markets.

**Article 6. Holidays, Vacations and Other Compensable Absences.**

**Section 1. Holidays.** There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday, it shall be made a part of this Article.

Employees who are absent the regularly scheduled work-day before, or after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day during a holiday week, he shall be paid the extra day or half day rates set out in Article 3.

**Section 2. Vacations.** Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After two (2) years of service he shall be entitled to two (2) weeks' vacation with pay. Effective January 1, 1958, all employees having ten (10) years of continuous full-time service shall be entitled to three (3) weeks of vacation with pay. Unless otherwise

mutually agreed upon between Employer and employee, vacation weeks shall be taken consecutively. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters.

Whenever a holiday listed in Section 1 of this Article falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the Employer's option.

Section 3. Absences Due to Injuries. Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such workweek, provided, however, that the employee shall report upon receipt of the injury to the Employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued  
32 to their party under the State Workmen's Compensation Act, and that the Employer shall receive credit for any payment made under this provision should compensation be awarded by the Industrial Commission of Illinois.

#### Article 7. Union-Management Relations.

Section 1. Union Employees. The Union, if requested, will furnish men, insofar as they are available, who will work to the best interest of the Employer in every way, just and lawful, who will give honest and diligent service to patrons of the Employer's establishment, and who will do everything within their power for the uplifting of the meat industry.

Section 2. Union Shop. The Employer agrees to employ and keep in employment only such persons who, thirty (30) days after the effective date hereof or thirty (30)

days after commencement of employment, whichever is later, are, and thereafter continue to remain, members in good standing of said Union. The Employer agrees that, upon written notice from the Union, it will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

Section 3. Union Preference. When permitted by law, the Employer agrees that when in need of help he will give preference to members in good standing in the Union.

Section 4. Business Representatives. Union Business Representatives shall be admitted to the Employer's market premises during the hours meat department employees are working for the purpose of ascertaining whether or not this Agreement is being observed and for collecting dues. Such activities shall be conducted in such a manner as not to interfere with the orderly operation of Employer's business. Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the wage scale fixed herein.

Section 5. Discharge. No employee shall be discharged without good and sufficient cause. Drunkenness, dishonesty, incompetency, incivility or an oversupply of help will be sufficient cause for dismissal. Help can be dismissed providing preference be given to Union men in replacing help.

Section 6. Display of Contract and Union Shop Cards. This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

It will be the duty of the Employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall remain the property of the Union, and the Employer shall have their usage only until such time as the Union shall request their



return. The Employer agrees to surrender same immediately upon demand by the Union.

Section 7. Grievances and Arbitration. Should any dispute or grievance arise between the Employer and the Union or between the Employer and its employees, concerning the application and/or construction of this Contract, the parties agree that such matter shall be adjusted, if possible, by negotiations. In the event the dispute or grievance cannot be composed by negotiations within fifteen (15) days after the inception of the matter in dispute, then it shall be submitted immediately to a Board of Arbitration, consisting of three (3) persons, for final and binding decision. Either party may institute said arbitration proceedings by giving the other party notice thereof in writing, naming one person to act on his behalf on said Arbitration Board; and the other party shall, within five (5) days after receipt of such written notice, name one person to act on his behalf on said Arbitration Board. These two (2) so selected shall designate the third (3rd) member or referee of the Board. In the event these two (2) so selected shall be unable, within fifteen (15) days, to agree upon the third (3rd) member or referee, then the third (3rd) member of the Board shall forthwith be designated under the rules and procedures of the Federal Mediation and Conciliation Service. The Board shall hold hearings and render its decision in writing within thirty (30) days with respect to a dispute under Article 1 (d) and within ninety (90) days with respect to any other dispute. The Board's decision shall be final and binding upon both parties. The decision of any two (2) members of the Board shall be the decision of the Board. If the parties shall agree upon one person to act as Arbitrator, his decision shall be as binding as that of a Board of Arbitration. The compensation and expense, if any, of witnesses and the cost of other evidence shall be borne by the

party on whose behalf witnesses are called or the evidence is introduced. Each party shall pay for the compensation and expenses of the Arbitrator appointed by it. The compensation and expenses of the third (3rd) Arbitrator and all other costs incurred in conducting the arbitration proceedings shall be borne equally by the parties hereto.

The Union reserves the right to strike and/or picket the plant of the Employer in the event the Employer shall fail or refuse to comply with any decision of a Board of Arbitration within ten (10) days after notice thereof. The Employer reserves the right to declare a lock-out should the Union fail or refuse to comply with any decision of a Board of Arbitration within ten (10) days after notice thereof.

Grievances of any nature must be made within forty-five (45) calendar days after the cause giving rise to the grievance becomes evident; and wage claims shall not be valid and collectible for a period earlier than ninety (90) days prior to the date of filing the grievance or the date the grievance arose, whichever date is most recent.

Section 8. *Economic Rights.* Nothing herein contained shall limit the right of the Employer or of the Union to make use of such economic rights as such party possesses in event of either a breach of this Contract or the reaching of an impasse on any wage reopening; provided, however, that there shall be no strike, picketing or lock-out for any cause whatsoever during the period of any arbitration proceedings. An arbitration proceeding shall commence on the day either party demands arbitration and shall end on the day the decision is rendered.

Section 9. *Concessions to Other Employers.* The Union agrees that during the term of this Agreement it will not

enter into a contract with any other employer which grants to such other employer the right to operate self-service markets for lesser wages or longer hours or any other condition of employment or market operation more favorable to such other employer than those contained in this Contract except upon the condition that this Employer shall receive the benefit of any more favorable terms granted to such other employer.

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### Article 8. Term.

Section 1. Initial Term. This Agreement shall become effective at 12:01 a.m., October 6, 1957, and shall expire at 12:00 midnight, October 3, 1959.

Section 2. Renewal Term. If either party wishes to modify this Agreement at its expiration, it shall serve notice in writing of such request upon the other party not less than sixty (60) days prior to the expiration date. In the absence of the service of such notice, this Contract shall automatically renew itself for a period of one year and from year to year thereafter, it being further agreed that the Contract expiration date shall be the first Saturday in October of each year.

Section 3. Retroactivity. This Contract shall remain in full force and effect until a new agreement is negotiated, but not beyond an additional sixty (60) days beyond the Contract expiration date. Any increases in wages set out in Article 3 resulting from the negotiations following the Contract expiration date shall be retroactive to the date of expiration, but not exceeding ninety (90) calendar days, whichever period shall be shorter. There shall be no retroactivity with respect to other contract changes, such as changes in working hours or premium or overtime pay.

*Memorandum.*

Executed at Chicago, Illinois, this 29th day of January, 1958.

Locals 320-571, Amalgamated Meat  
Cutters and Butcher Workmen of  
North America, AFL-CIO,

By Alex M. Nieliebowski,

*President,*

By Fred Clavio,

*Secretary-Treasurer.*

Employer Jewel Tea Co., Inc.,

By E. T. Vorbeck,

*Assistant Secretary.*

Employer's Address:

1955 West North Avenue,

Melrose Park, Illinois.

41. IN THE UNITED STATES DISTRICT COURT.  
• • (Caption—58-C-1415) • •

MEMORANDUM.

This declaratory judgment suit is brought pursuant to the treble damage section of the anti-trust laws, 15 U. S. C. A. § 15, charging that certain locals of the defendant union and their officers conspired with the Associated Food Retailers of Greater Chicago, Inc., an association of independent retail stores, to suppress competition among retail meat markets in the Chicago area, and to prevent the sale of fresh meats, i.e., beef, veal, lamb, mutton and pork and meat products before 9 A.M. or after 6 P.M. Mondays through Saturdays; and to monopolize for members of the defendant unions the retail portion of the trade or commerce in such meats; that pursuant to such conspiracy, defendants agreed

- (1) that no one be permitted to make retail sales of said fresh meats before 9 A.M. or after 6 P.M.;
- (2) that union members be prohibited from participating in any sale of such meats before 9 A.M. or after 6 P.M.
- (3) that no one be permitted to sell such meats outside these hours with or without employment of union members;
- (4) that defendant members of the Associated Food Retailers agreed among themselves to insist that all collective bargaining agreements between them and defendant union, or between defendant union and plaintiff or other operators, contain the prohibition of retail sales of fresh meats outside these hours;
- (5) that Associated conspired and agreed with other defendants that neither plaintiff nor any other merchandiser is to be permitted to compete with them by operating self-service meat markets between 6 P.M. and 9 P.M.;
- (6) that defendant unions have acted as the enforcing agent of the conspiracy.

It is also alleged that in 1957 when negotiations on new agreements were required because of the expiration of the old agreement, the plaintiff insisted the clause relating to restriction of hours of operation was illegal, and that it was willing and able to operate its self-service markets after 6 P.M. on one or more nights a week without requiring any members of defendant union to work such hours; that defendant Associated refused to enter into an agreement to permit night openings and defendant union supported and abetted such refusal; that defendant union threatened to strike and picket any operator who refused to sign such contract and under compulsion of said con-



*Memorandum.*

spiracy plaintiff did sign the agreement, that in May 1958 defendant Kelly, an officer of Local 546 of defendant union, at a meeting with representatives of market operators in this area reported that he and other defendants had learned in several instances markets had been operated outside the designated hours, and that if such continued there would be no arbitration procedure followed and that butchers would be removed from service in such stores.

It is further alleged that the effect of this combination and conspiracy has been the unlawful restraint of (1) plaintiff's right to sell fresh pre-cut meats at reasonable hours; (2) competition among retail meat dealers and consequent denial to the public of the benefits thereof, and that the cost of meats at retail in Chicago has been held higher than it otherwise would be; (3) interstate trade and commerce of meats and meat products in that a major part of all of said goods is produced in states other than the

State of Illinois and is shipped in interstate commerce  
43 from such states, and, insofar as plaintiff is concerned in 1957 its sales of meat, poultry and fish was \$85,000,000 and approximately 77.5% of such products retailed by it originate outside the State of Illinois; and (4) plaintiff's right to freely use its property and facilities with a consequent loss of profits in excess of \$25,000.

It is requested that the court declare the alleged conspiracy and combination an unlawful restraint of trade and commerce; that defendants be enjoined from continuing the same; that the restriction on hours of marketing be declared illegal, null and void and that defendants be enjoined from enforcing the same; that the defendants be enjoined from harassing, intimidating, hindering, striking or picketing plaintiff for the purpose of restricting the hours of marketing.

In the pertinent parts to be considered here, the collective bargaining agreement in Article 4 covers Working

Hours and other conditions of employment expressly confining the basic work day to eight hours, work to begin at 9 A.M. and stop at 6 P.M. Article 5 which follows covers Market Operating Hours, and is the clause which is challenged in these proceedings. It provides.

"Market operating hours shall be 9 A.M. to 6 P.M. Monday through Saturday, inclusive. No customer shall be served before or after the hours set forth above, except that customers in the market at closing time shall be served."

Defendants have filed a motion to dismiss the complaint for the reason (1) that because the complaint alleges the clause restricting market hours is null and void, the plaintiff being a party to the contract is in pari delicto and can not recover any damages; and, in any event has suffered no injury; (2) the alleged activities and contract provision do not affect interstate commerce; (3) the alleged activities are not within the proscription of the antitrust laws since the clause is a reasonable regulation of trade; (4) the alleged controversy regulating market operating 44 hours constitutes a labor dispute over which this court has no jurisdiction; and (5) the alleged controversy comes within the labor exemption to the antitrust law.

The general premise guiding courts in their considerations on motions to dismiss complaints is to be applied in this case as well; that is, would the plaintiff be entitled to relief upon any state of facts which might be proved in support of its allegations.

At the outset, it is established that the fact that a labor union is a defendant under proceedings for violation of the antitrust laws does not per se bring it within the exemption from suit contained in § 6 of the Clayton Act (15 U. S. C. A. § 17) or injunction contained in § 20 of the Clayton Act. (29 U. S. C. A. § 52). The decision of the

Supreme Court of the United States in *Allen Bradley Co. v. Union*, (1944) 325 U. S. 808, declared that

"Congress did not intend by the Clayton or the Norris-La Guardia Act that labor unions could, consistently with the Sherman Act, aid non-labor groups to create business monopolies and to control the marketing of goods and services."

The Norris-La Guardia Act was specifically intended to protect the normal activities of workingmen to form a union and to act together to further their interests as members of the union even though such union activities might to some extent affect interstate commerce, 29 U. S. C. A. § 104, but where labor unions combine upon objects outside the field of labor relations they do become amenable to the Sherman Act. *Internat'l Assn. Bridge, Structural & Ornamental Iron Workers v. Pauly Jail Bldg. Co.*, (C. A. 8, 1941) 118 F. (2d) 615, 621 cert. den. 314 U. S. 639.

The challenged provision is contended and alleged by plaintiffs to be the means of effectuating the alleged combination and conspiracy; but, the defendants assert its purpose is related solely to employer-employee relationship and its existence is an integral part of the terms and conditions of employment. On a motion to dismiss this question is not possible of determination. Restrictive union rules with limit market distribution would seem to be within the purview of the antitrust laws if the conditions of interstate commerce and intent are met. The complaint alleges a joinder of purpose between union and independent employers inimicable to legitimate objectives of labor organizations and sufficiently places in doubt the objective sought to be attained.

It is also sufficiently alleged that this provision has the effect of restraining interstate commerce. Local restraints having an adverse effect on such commerce are within the

prohibition of the antitrust laws. *United States v. Employing Plasterers*, (1954) 347 U. S. 186. The allegations of the complaint aver that customers purchase less meats due to the market hour restriction and that the interstate supply and shipment thereof is affected.

It is also clear that the determination of the efficacy of the defense of *pari delicto* raised by defendants on their motion to dismiss cannot be made at this time and on this state of the pleadings. While a party to an illegal contract usually cannot invoke the aid of a court in its enforcement, as a general rule where the contract is violative of a statute, a party will not be barred from setting up its illegality, particularly when it will further the public interest which the statute was designed to protect.

The Court is of the opinion that the complaint does state a claim for relief under the antitrust statutes and the defendants motion to dismiss should be overruled. An order in accord therewith has this day been entered.

Walter J. La Buy,  
Judge, *United States District Court*.

March 31, 1959.

Winston, Strawn, Smith & Patterson,  
38 South Dearborn Street (3);

Asher, Gubbins & Segall,  
130 N. Wells Street (6).

64

*Letter, Court to Counsel.*

46

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1415) • •

This cause having been heretofore taken under advisement by the Court on defendants' motion to dismiss the complaint, after due consideration and the Court being fully advised files herein its memorandum opinion, in accordance with which it is

Ordered that said motion to dismiss the complaint be and it hereby is overruled.

87

UNITED STATES DISTRICT COURT.

Chicago 4.

Chambers of

Judge Walter J. La Buy

May 19, 1959

Winston, Strawn, Smith & Patterson,  
38 South Dearborn Street,  
Chicago 3, Illinois.

Asher, Gubbins & Segall,  
130 North Wells Street,  
Chicago 6, Illinois.

Re: Jewel Tea Co. v. Local Unions,  
58 C 1415.

Gentlemen:

The court has considered defendants' motion to vacate the order of March 31, 1959 overruling defendants' motion to dismiss the complaint in the above cause and is of the opinion said motion should be and hereby is denied.



During the course of oral arguments on the motion to vacate, defendants' counsel called the attention of the court to an erroneous statement contained in the court's memorandum regarding the allegations of the complaint. On page 5 in the first full paragraph, last sentence, the court said:

"The allegations of the complaint aver that customers purchase less meats due to the market hour restriction and that the interstate supply and shipment thereof is affected."

This appears in plaintiff's brief pages 23-24 and was mistakenly stated to be contained in the complaint. The sentence is hereby ordered deleted from the memorandum of the court.

The court is further of the opinion that defendants' oral request for an order permitting an interlocutory appeal 88 from the orders of this court should be allowed. Accordingly, the court has entered such an order, copy of which is attached hereto.

Very truly yours,

/s/ Walter J. La Buy,

*Judge.*

OJ

Enc.

*Order re: Interlocutory Appeal.*

IN THE UNITED STATES DISTRICT COURT.

• • • (Caption—58-C-1415) • • •

Tuesday, May 19, 1959.

Present: Honorable Walter J. La Buy, District Judge.

After due consideration and the Court being fully advised files herein its memorandum opinion and in accordance therewith it is

Ordered that the defendants' motion to vacate the order of March 31, 1959 overruling the defendants' motion to dismiss the complaint be and it hereby is denied and it is

Further Ordered that the last sentence in the first full paragraph on page 5 of the Court's memorandum filed March 31, 1959, where the Court said:

"The allegations of the complaint aver that customers purchase less meats due to the market hour restriction and that the interstate supply and shipment thereof is affected."

be and it hereby is deleted from said memorandum.

IN THE UNITED STATES DISTRICT COURT.

• • • (Caption—58-C-1415) • • •

**ORDER.**

This cause came on to be heard on the motion of defendants to vacate the order of this court entered March 31, 1959, and for permission to file an interlocutory appeal therefrom;

The court being of the opinion that the orders denying defendants' motion to dismiss and motion to vacate said order involve controlling questions of law as to which there is substantial ground for difference of opinion and that an immediate appeal from these orders will materially

advance the ultimate termination of the litigation concludes that an appeal should be permitted to be taken from the orders at this time pursuant to § 1292(b), 28 U.S.C.A.;

It is therefore ordered that the defendants be granted leave to file their interlocutory appeal, and said order shall suspend and stay all further proceedings in this court pending consideration of this matter by the Court of Appeals.

/s/ Walter J. La Buy,  
*Judge, United States District Court.*

May 19, 1959.

91 UNITED STATES OF AMERICA, ss:

The President of the United States of America.

To the Honorable the Judges of the United States District Court for the Northern District of Illinois, Eastern Division, Greeting:

Whereas lately in the United States District Court for the Northern District of Illinois, Eastern Division before you, or some of you, in a cause between Jewel Tea Co., Inc., Plaintiff vs. Local Unions Nos. 189, 262, 320, 546, 547, 571 and 638 of Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, et. al., Defendants, No. 58 C 1415. Orders were entered on the thirty-first day of March, 1959 and nineteenth day of May, 1959, 91-A as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals for the Seventh Circuit by virtue of an appeal granted by the United States Court of Appeals to the Defendants, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

*Mandate of Court of Appeals.*

92 And Whereas, in the term of September, in the year of our Lord one thousand nine hundred and fifty-nine, the said cause came on to be heard before the said United States Court of Appeals for the Seventh Circuit, on the said transcript of record, and was argued by counsel.

On Consideration Whereof, it is ordered and adjudged by this court that the orders of the said District Court in this cause appealed from be, and the same are hereby, Affirmed, with costs, and that this cause be, and it hereby, Remanded to the said District Court for further proceedings not inconsistent with the views expressed in the opinion of this Court filed this day, Monday, January 11, 1960.

93 You, therefore, are hereby commanded that such further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Earl Warren, Chief Justice of the United States, the first day of April, in the year of our Lord one thousand nine hundred and sixty.

/s/ Kenneth J. Carrick,  
Clerk of the United States Court of  
Appeals for the Seventh Circuit.

(SEAL)

UNITED STATES DISTRICT COURT.  
(Caption—58-C-1415)

ANSWER.

This answer is filed by defendant unions and their named officers and representatives. References in the answer to "defendants" are to these defendants only.

1. Answering the allegations of paragraph 1, defendants admit that the action is brought under 15 U.S.C. § 15 and 28 U.S.C. § 2201.

2. The allegations of paragraph 2 are admitted, except that the individual referred to as Mark Cantrell is probably intended to refer to Mark Allen, the individual referred to as Fred Clavio is probably intended to refer to Frank Clavio, and the individual referred to as Alex M. Nielowski is probably intended to refer to Alex M. Nielowski. It is denied that the amount in controversy exceeds the sum of \$10,000.

95 3. The allegations of paragraph 3 are admitted, except that defendants are without knowledge as to the precise number and precise locations of the stores.

4(a). The allegations of paragraph 4(a) are admitted, except that it is denied that this is properly a class action and it is denied that the words "a monopoly of persons" is a proper description.

4(b). The allegations of paragraph 4(b) are admitted, except as qualified in paragraph 2 of the answer, and except that it is denied that R. Emmett Kelly "is a representative of all of said locals."

4(c). The allegations of paragraph 4(c) are admitted, except that defendants are without knowledge as to the quotation describing Associated's "purposes." The membership of Associated comprises operators of service markets, self-service markets, and multiple stores.



4(d). The allegations of paragraph 4(d) are admitted.

5. The allegations of paragraph 5 are admitted, except that defendants are without information as to the volumes alleged other than to aver that they are substantial.

6. Answering the allegations of paragraph 6, defendants are without knowledge as to the volume alleged other than to aver that it is substantial.

7. The allegations of paragraph 7 are admitted, except that defendants are without knowledge as to the volumes alleged in the first sentence other than to aver that they are substantial, and defendants are without knowledge as to the percentage alleged in the last sentence.

96 8. The allegations of paragraph 8 are denied, except for the first sentence of that paragraph which is admitted.

9. The allegations of paragraph 9 are denied.

10. Answering the allegations of paragraph 10, defendants admit the first two sentences of the paragraph and so much of the third sentence as reads that: "Such cuts are wrapped in sanitary, transparent cellophane or similar wrapping, are accurately marked as to weight, price and grade, and are displayed in special refrigerated cases. . . ." Defendants also admit that "This system of vending meat is commonly known as the 'pre-packaged, self-service' system." In all other respects the allegations of paragraph 10 are denied.

11. The allegations of paragraph 11 are denied.

12. The allegations of paragraph 12 are denied.

13. Answering the allegations of paragraph 13, defendants admit that there are metropolitan areas other than Chicago in which meat is sold evenings through the pre-packaged self-service system, and that butchers in these areas are members of local unions affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America. In all other respects the allegations of paragraph

13. are denied. Defendants aver that there are metropolitan areas other than Chicago in which meat is not sold evenings notwithstanding the operation of the pre-packaged, self-service system in these areas.

14. Answering the allegations of paragraph 14, defendants admit that plaintiff has "stores in the Chicago area presently equipped for the pre-packaged, self-service system of vending meats. . . ." Defendants are without 97 knowledge as to the precise number of such stores. In all other respects the allegations of paragraph 14 are denied.

15. The allegations of paragraph 15 are denied.

16. The allegations of paragraph 16 are denied.

17. The allegations of paragraph 17 are denied.

18. The allegations of paragraph 18 are denied.

19. The allegations of paragraph 19 are denied.

20. The allegations of paragraph 20 are denied, except that defendants admit that meetings for the purpose of negotiating new agreements were held and that during these meetings plaintiff expressed its opinion that to require that marketing hours in the retail sale of meat cease after 6:00 p.m. was an illegal restraint of trade.

21. The allegations of paragraph 21 are denied, except that defendants admit that plaintiff signed collective bargaining agreements in late January and early February 1958, true copies of which are appended to the complaint as Exhibits 1 and 2; that the agreements contained a provision as quoted in paragraph 21; and that the agreements extended to October 3, 1959.

22. The allegations of paragraph 22 are denied, except that defendants aver that market operators were apprised of the necessity of complying with the provision of the collective bargaining agreements pertaining to market operating hours.

23. The allegations of paragraph 23 are denied.

**First Defense.**

24. Plaintiff is without standing to maintain the action because (a) it is in pari delicto, and/or (b) it sustains no injury.

98

**Second Defense.**

25. The alleged restraint does not affect interstate commerce and therefore is not within the purview of the Sherman Antitrust Act.

**Third Defense.**

26. The alleged restraint constitutes a reasonable regulation of trade and therefore is not within the prohibition of the Sherman Antitrust Act.

**Fourth Defense.**

27. The alleged restraint embodies an agreement upon a mandatory subject of collective bargaining, is otherwise within the exclusive regulatory scope of the National Labor Relations Act, and is therefore outside the jurisdiction of the Court.

**Fifth Defense.**

28. The alleged restraint is within the labor exemption to the Sherman Antitrust Act.

**Sixth Defense.**

29. The complaint does not state claim within the jurisdiction of the Court or upon which relief can be granted. Wherefore, having fully answered, defendants pray that the complaint be dismissed and that they have their costs.

/s/ Leo Segall,

Lester Asher,

Joseph E. Gubbins,

Leo Segall,

130 North Wells Street,

Chicago 6, Illinois.

/s/ Bernard Dunau,

912 Dupont Circle Building, N. W.,

Washington 6, D. C.

100

UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1415) • •

**ANSWER OF DEFENDANTS CHARLES H. BROMANN AND ASSOCIATED FOOD RETAILERS OF GREATER CHICAGO, INC.**

Now comes defendants Associated Food Retailers of Greater Chicago, Inc. hereinafter sometimes referred to as "Associated" and Charles H. Bromann hereinafter sometimes referred to as "Bromann" by their attorneys and answers each correspondingly numbered paragraphs of the Complaint as follows:

1. Admits that the Complaint purports to state a claim under the Acts of Congress specified in Paragraph 1, but denies that a cause of action has arisen against the defendants under said Acts:

101 2. Admits that the defendants Associated and Bromann maintain offices and transact business within the Eastern Division of the Northern District of Illinois, and are found therein, but deny that the amount in controversy exceeds the sum of Ten Thousand Dollars (\$10,000.00). Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 2.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3.

4. (a) Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 (a).

(b) Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4. (b).



(c) Admits the allegations of Paragraph 4 (c) except that defendants deny that they represent "several thousand individual or independent food stores engaged in retail sale of meat" and state that the number is less than one thousand.

102 (d) admits the allegations of Paragraph 4 (d).

5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5.

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7.

8. Admits the allegations contained in the first sentence of Paragraph 8 but denies all other allegations in said Paragraph 8.

9. Denies the allegations of Paragraph 9.

10. Admits the allegations contained in the first two sentences of Paragraph 10 and the sentence which reads "This system of vending meat is commonly known as the 'pre-packaged, self-service' system." As to all other allegations contained in Paragraph 10, defendant Bromann is without knowledge or information sufficient to form an independent belief as to their truth, and the members, directors and officers comprising defendant Associated are without a uniform opinion as to the truth of said allegations.

11. Defendant Bromann is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11, other than to aver that in his opinion a self-service meat market cannot operate in an efficient and successful way for an appreciable period of time without employees on duty. The directors, officers and members of defendant Associated do not have a uniform opinion as to the truth of the allegations of Paragraph 11.



12. Denies the allegations of Paragraph 12 except that as to the allegation "Such families greatly desire, and should be able to purchase meat in the evenings of one or more of the days Monday through Friday each week", the directors, officers and members of defendant Associated do not have a uniform opinion as to the truth of said allegation.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14.

104 15. Denies the allegations of Paragraph 15.

16. Denies the allegations of Paragraph 16.

17. Denies the allegations of Paragraph 17.

18. Denies the allegations of Paragraph 18.

19. Denies the allegations of Paragraph 19.

20. Admits that meetings were held for the purpose of negotiating new agreements and that at these negotiations Plaintiff stated that it considered a restriction on its hours of operation illegal and a restraint of trade. Defendants deny the remaining allegations of Paragraph 20.

21. Defendants deny that the Unions made any direct threat to strike and picket any operator who refused to sign the contract which banned evening sales of meat but defendants did recognize that in the process of collective bargaining Unions do have the power to strike and picket. Defendants admit that the Articles of Agreement finally negotiated contained the provision as quoted in Paragraph 21 of plaintiff's Complaint. Defendants deny the remaining allegations of Paragraph 21.

105 22. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22.

23. Denies the allegations of Paragraph 23.

**Affirmative Defenses.**

1. For a first affirmative defense defendants Bromann and Associated alleged that they negotiated with defendant Unions at arms length, in good faith and in the same manner as did the plaintiff, other corporate chains and other independents and that all of the terms of the Articles of Agreement as contained in plaintiff's Exhibit 1 and Exhibit 2 were arrived at by the process of collective bargaining.

2. For a second affirmative defense defendant Bromann alleges that he is employed by defendant Associated and acted as the Agent of Associated, negotiating with the defendant Unions under the direction and instructions of the directors of Associated; at no time did Bromann receive a unanimous direction to demand a 6 o'clock closing nor did Bromann at any time make a demand for a 6 o'clock closing.

106 3. For a third affirmative defense defendants Bromann and Associated alleged that they finally submitted to the contracts demanded by the Union for the same reason that plaintiff and all other employers submitted to said contracts; namely, because the terms of the Agreement taken as a whole were the best obtainable without risking a strike by insistence upon better terms.

4. For a fourth affirmative defense defendants alleged that neither plaintiff, nor Associated, nor any employer signatory to the Agreements could lose any rights or suffer any damage because of the following provisions contained in plaintiff's Exhibits 1 and 2:

Service Contract—"Section 5. Partial Invalidity. Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed to be in such violation, then that part shall

be made null and void and the parties agree that they will immediately begin negotiations to replace said void part with a valid provision."

- 107 Self-Service Contract—"Section 4. Partial Invalidity. Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed by a court or board of competent jurisdiction to be in such violation, then that part shall be made null and void, the remainder of the Contract shall continue in full force and the parties will immediately begin negotiations to replace the void part with a valid provision."

The foregoing provisions provided a specific remedy and method of procedure where anything contained in the Agreements were illegal.

5. For a fifth affirmative defense defendants allege that the restraint complained of is a fundamental part of a collective bargaining agreement arrived at through collective bargaining and therefore governed by the National Labor Relations Act and not subject to the jurisdiction of the Court.

108 6. For a sixth affirmative defense defendants allege that the restraint complained of has no bearing upon Interstate Commerce and is therefore not within the prohibition of the Sherman Anti-Trust Act.

7. For a seventh affirmative defense defendants allege that the alleged restraint applies to and affects all signatory employers equally and therefore no employer has been damaged or has sustained any injury.

8. For an eighth affirmative defense defendants allege that the alleged restraint comprises a reasonable regulation of trade and is therefore not within the prohibition of the Sherman Anti-Trust Act.

9. For a ninth affirmative defense defendants allege that the alleged restraint falls clearly within the labor exemption of the Sherman Anti-Trust Act.

Wherefore the defendants ask that judgment be entered in its favor, dismissing the action of the plaintiff and discharging defendants with costs of this action.

/s/ Harry H. Henry,  
Sidney M. Libit,  
Henry D. Lindauer,  
Harry H. Henry.

Libit, Lindauer & Henry,  
77 W. Washington St.,  
Chicago, Illinois.

### AMENDMENT TO COMPLAINT.

Now comes Jewel Tea Co., Inc., a New York corporation, by its attorneys, George B. Christensen and Fred H. Daugherty, leave of court being first duly had and obtained, and amends its complaint by striking Paragraph 5 of the prayer thereof and substituting the following:

5. That plaintiff be awarded damages in the amount of Seventeen Million Dollars, trebled, and costs and attorneys' fees.

/s/ George B. Christensen,

/s/ Fred H. Daugherty.

Winston, Strawn, Smith & Patterson,  
38 South Dearborn Street,  
Chicago 3, Illinois,  
Financial 6-3600,  
*Of Counsel.*

1           IN THE UNITED STATES DISTRICT COURT.  
          • •   (Caption—58-C-1415)   • •

Transcript of proceedings had in the trial of the above entitled cause, before the Hon. Walter J. La Buy, one of the Judges of said Court, sitting in his courtroom, Room 600 United States Courthouse, Chicago, Illinois, on Wednesday, October 24, 1962, at 10:00 o'clock A.M.

10   R. EMMETT KELLY, called as an adverse witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Mr. Kelly, will you please state your full name for the record?

A. Mr. R. Emmett Kelly.

Q. Where do you live?

A. 18 Meadowview Drive, Northfield.

Q. Illinois?

11   Q. How old a man are you?

A. 54.

Q. Where were you born?

A. In Chicago, sir.

A. In Chicago, approximately 35 years.

Q. What education have you had, Mr. Kelly?

A. I have had a grade school education, a high school education, and three years at the University of Notre Dame.

Q. Would you be good enough to tell the Court what your working history has been?



A. In 1931, I came to Local Union 546 that I now represent, and I have been with the organization since that time.

12 Q. Prior to that time, Mr. Kelly, had you done any work in butcher shops?

A. Yes, sir, I had.

Q. Would you describe that just briefly?

A. Well, during my very early years, when my father was a meat cutter, I worked with him in a market known as Trainor's Market.

Q. And where was that market located?

A. At Sacramento and Harrison, in Chicago.

Then, after that, during high school I worked after school, and also on Saturdays and during vacations, in a market called Vackout Brothers, at Laramie and Harrison, in Chicago.

Then still later on, on a part time basis, I worked for the National Tea Company.

Q. At the market?

A. Yes, sir, I did.

Q. Now, in 1931, sir, did your father hold any position with the Amalgamated Local 546?

A. Yes, he was the secretary-treasurer.

Q. What was your first position with the Amalgamated Local, and I am going to call it Local No. 546, and I  
13 am referring to your organization, and what was your first position with Local 546?

A. In 1931, that of a clerk, sir.

Q. And as a clerk, what, in general, were your duties?

A. Well, I handled the unemployment compensation problems of the local union that arose, and I did assist bookkeeping work, and I handled the NRA problems that were prevalent at that time.

Q. Did there come a time when your duties changed or were enlarged?

A. Yes, there did.

Q. When was that?

A. In 1935, when I became an assistant business representative.

Q. Was your father still alive at that time?

A. Yes, he was, sir.

Q. Now, as assistant business representative for Local 546, what, in general, were your duties and your activities?

A. My duties were, at that time, to assist the then business representative, Mr. James Laverty, who was in charge of a certain district within the Chicago area. I 14 worked with him and at his direction, and on occasions going in and out of the markets handling the problems of the meat cutters that we represented, their vacations, their complaints, their salaries and the collection of dues, sir.

Q. Did your position thereafter change?

A. Yes, it did, sir.

Q. When did the change commence?

A. The change took place in 1936.

Q. And what was that change?

A. I became a full business representative at that time.

Q. And, as such, what were your duties?

A. They were identical, except that I was assigned to a district of my own.

Q. And doing it on your own responsibility?

A. That is right, sir.

Q. And as full business representative, who did you report to?

A. I reported to the then secretary, Mr. James Laverty.

Q. Now, did you have a still further promotion?

A. Yes, sir, I did.

Q. When did that occur, Mr. Kelly?

A. This occurred in July of 1940.

15 Q. What was the nature of that promotion?

A. Upon the death of Mr. Lavery, I was appointed active secretary of the Local Union, and that was to fill out his unexpired term.

16 Q. Now, in the operation of Local 546, what functions have you performed as—you subsequently became regular secretary, did you not?

A. Yes, I did.

Q. Now, would you briefly describe what your duties are and what you actually do as such secretary?

A. I am in charge of all the correspondence matters of the organization.

I am in charge of the handling of all of the funds of the organization, receipts and disbursements.

I am in charge of handling the contract negotiations for the Local Union.

Q. And do all the business representatives report to you?

A. Yes, sir; they do.

Q. You, rather than the president, are the active executive head of the Local, are you not?

17 A. I would be inclined to say yes, sir, to that.

Q. Now, do you hold any other positions with Amalgamated besides secretary of Local 546?

A. Yes, I do.

Q. What is that?

A. I am an international vice-president.

Q. When did you become an international vice-president?

A. In 1941.

Q. Now, as an international vice-president in general, what are your duties and functions?

A. I am in charge of what is commonly known in our

organization as District No. 10 of the Amalgamated Meat Cutters Union. The Chicago area is known as District No. 10.

Q. Now, by "the Chicago area" would you just be a little more definite and explain to the Court what "the Chicago area" embraces?

A. The Chicago area embraces all of the geographical area from Waukegan on the north over as far as Rockford, Illinois, down as far downstate as Decatur, Illinois, and over to the Indiana border, the Indiana State line.

18 Q. It is roughly the northeast quarter of Illinois?

A. Yes, so to speak, but still it extends down south considerably, down as far as Decatur.

Q. And up to the Wisconsin line?

A. Yes, sir, I would say so.

Q. Now, would you please state for the Court the various fields in which Amalgamated, nation-wide, has members? What I am getting at, Mr. Kelly, to assist you, is we are concerned here with the retail marketing of meat. But Amalgamated has members who are engaged in other work or functions in retail. Would you just briefly describe the nature of the Amalgamated nation-wide or international-wide? What areas or fields of work it covers?

A. Variously speaking, we cover the field of packing, packinghouse work, canneries, retail, poultry plants, fur and leather, tanneries.

Frankly, those are the major jurisdictional parts.

19 Q. Now, if I may, I will ask you to tell about the retail activities, the activity of your Union, and I am talking now of the various locals in Metropolitan Chicago in respect to the retail sale of meat.

We have prepared a chart which may be more or less accurate, I don't know, made as best we could understand from your deposition.

As I understand it, and wherever I state something wrong you correct me, Local 546 of the Amalgamated, of which you are secretary, has a geographic area that extends roughly from the Evanston-Wilmette boundary on the north, out to Wolf Road?

A. Yes, sir.

Q. It then drops down to 79th Street?

A. Yes, sir.

Q. And runs over to the Lake?

A. Not quite, sir.

Q. Not quite.

20 It has approximately 5,000 members?

A. That is correct.

Q. Has had for several years?

A. Yes, sir.

Q. Within the area roughly bounded by Local 546 are two other Locals?

A. That is correct.

Q. One is Local 638, which I have indicated on this chart with an orange color, and that is on the—roughly the west side, and it starts at approximately Roosevelt Road and runs down to 47th Street, and it starts on the east side along about Halsted Street and runs out beyond the City boundaries into the edge of some of the western suburbs?

A. This is correct.

Q. And it has approximately 700 members?

A. That is correct.

Q. Now, your Local 547 is in the southeast portion of Chicago?

A. Yes, sir.

21 Q. It has a rather diffused geographic jurisdiction, it has a hard—the center part of this membership is over near the Lake, but it has shops or locations in



which it represents people, a little on the southwest, some on the Near North, and some up north?

A. This is correct, sir.

22 Q. Are the boundaries drawn here for those three Locals reasonably correct?

A. I would say they are reasonably correct.

Q. We don't purport by the location of these blue dots for Local 546 to indicate the location of any shop, but simply to show there are some scattered around.

Then, immediately south of the southern of 546 at 79th Street commences another Local known as 321.

A. 320, sir.

Q. 320, thank you.

That, apparently, as I understand it, runs out to the southern line of Cook County?

A. That is right.

Q. It runs out to the Indiana line?

A. That is right.

Q. We do not understand, and our chart may not be quite accurate, as to what the boundary is between 320 and 571 on the west or southwest, but 571 starts at the lake and has the section in the lake-Calumet area and in that general area. Am I correct in that?

A. I think you are, sir. I am a little confused on the eastern boundary of 320, myself. I think in essence you are correct.

Q. We want this for illustrative purposes only, and we don't assert that these boundaries are precisely correct. I will ask you if this is reasonably correct, to give the Court a notion of what these various Locals are that we will talk about from time to time?

A. I would say it is reasonably correct.

Q. Local 320 has approximately 650 members, Local 571 approximately 240?

A. Correct.

Q. Now to the north commencing at the boundary between Evanston and Wilmette and running west quite a ways is another Local, No. 262?

A. Yes, sir.

Q. It has approximately 450 members?

A. That would be close.

Q. Now we show it on this map, and because this  
24 particular map only goes up to Mundelein, the southern end to Libertyville, but actually goes up as I understand it to Waukegan—

A. Yes, it does.

Q. And it comes over into here to Lake Zurich, Wauconda, somewhere, and whether the boundary stops at the Lake County Line or continues on off, we couldn't tell from your deposition. Could you tell us?

A. Quite frankly I am not absolutely clear on the westernmost limits of that Local Union, either. I know it butts up against Local 189 at some point.

Q. Now Local 189, which is indicated by the green slashings, so far as retail markets are concerned is virtually all the rest of the State of Illinois, is it not?

A. No, I wouldn't say that.

Q. Well, let's divide it into groups.

A. Yes, sir?

Q. Because it covers such a wide area and it runs way downstate somewhere.

A. Yes, sir.

Q. Beyond any point we are immediately concerned with?

25 A. That's right.

Q. And because it faces varying market conditions it is divided into what is called groups?

A. Yes, sir.

Q. Group 1, as we understand it, is immediately to the

west of Local 546 and 320 and it runs out to the DuPage-Kane County dividing line, or thereabouts?

A. I cannot say that, how far west. I know it borders against the Chicago Locals; but how far it goes out from that point, I really don't know.

Q. And it apparently also has some members that are down here in Chicago Heights and the Olympia Fields-Matteson area, down in there?

A. Yes, it does.

Q. Then, as a part of 189 apparently is a Group 1-A, which takes the next outer rim around the metropolitan area, is that correct?

A. That is correct, sir.

26 Q. In the area of 1-A, night sales of meat for years have been permitted, have they not, in such towns as Elgin, St. Charles, Geneva, Aurora?

A. Yes, sir, they have.

Q. And we have indicated that on this chart by these waving blue lines.

Will County is in a separate group, Group 1-A, or whatever it may be, of Local 189, and night sales of meat are permitted there. Isn't that correct?

A. Is not Joliet in Will County, sir?

Q. Yes, sir.

A. That is a separate local union.

Q. And night sales of meat are permitted there?

A. Yes, they are.

Q. Now, you are familiar with conditions in the adjacent Indiana territory?

A. Yes, I am.

Q. And night sales of meat are permitted there?

A. This is correct.

Q. So that when we get through, we find that in the area immediately surrounding the heart of the City of

Chicago, night sales of meat are and for many years  
27 have been forbidden in the territory of 262, 189—group  
or sub-group 1—roughly as delineated upon this chart,  
546, 547, 638, 547, 571, and 320. Isn't that correct?

What we are talking about is the hours for the vending  
of meats in the territory in which 262, 189, Group 1, 546,  
547, 638, 571, and 321 exert jurisdiction over the members.

Mr. \_\_\_\_\_: You mean 320, Mr. Christensen?

Mr. Christensen: 320. I misspoke. Thank you.

The Witness: What is your final question?

By Mr. Christensen:

Q. I say, that in the area in which those locals have  
jurisdiction over meat cutters—

A. Yes, sir.

Q. (Continuing)—night sales of meat are forbidden.

A. Well, the usual—the word “forbidden.” But by  
mutual agreement with the employers, there is no night  
sale of meat in that area.

28 Q. The mutual agreement forbids the night sale of  
meat, does it not?

A. Yes.

Q. And outside of that area the night sale of meat is  
permitted?

A. That is correct, sir.

Mr. Christensen: I will ask the reporter if she would  
mark this Plaintiff's Exhibit 1 (indicating), and I will  
offer it in evidence.

Mr. Dunau: No objection to its being received.

The Court: It may be marked and received in evidence.

(Said chart, so offered and received in evidence, was  
marked PLAINTIFF'S EXHIBIT 1.)

29 By Mr. Christensen:

Q. Now, Mr. Kelly, as a background, at least since  
the year 1950, in dealing with the major employers of

butchers, Locals 262, 189, 546, 547, 638, 571 and 320, have bargained as a group, have they not?

A. Yes, sir, they have.

30 Q. And the spokesman for that group has been none other than R. Emmett Kelly?

A. That is correct, sir.

Q. At some time prior thereto, and I am not quite sure of the date, the Amalgamated Local representing butchers in the Northern Indiana area, Lake County, and stretching over here (indicating) toward the eastern limit of Indiana also sat with you and bargained with you, did they not?

A. Yes, they did.

Q. And there came a time in which you refused to let them participate in your bargaining, is that not correct?

A. Are you speaking to me individually there? Or as a group?

Q. I am speaking of you individually.

A. No, sir, I didn't do that individually, sir.

Q. Well, how was it done?

A. Well, the combination of Local Unions that sat as a bargaining group together voted to eliminate that particular Local Union.

Q. And you recommended that they vote that way,  
31 did you not, Mr. Kelly?

A. I don't believe I recommended that, sir. I think it was a foregone conclusion that that would be the thing.

Q. Did you recommend it or didn't you?

A. Not to my knowledge, I did not.

Q. How did you personally vote?

A. I voted for their elimination.

Q. And do wish Judge LaBuy to believe that as the bargaining chairman of this group you made no recommendation to all of these Locals as to what they should do about their sister Local out here in Indiana?

A. Yes, sir, I do want Judge LaBuy—



Q. You want him to believe that?

A. Yes, sir, I certainly do.

Q. That you voiced no opinion?

A. I voiced my own personal opinion, but not as a recommendation to eliminate that Local Union.

Q. What was your personal opinion?

A. That in my personal opinion they should not be a part of the bargaining group.

Q. And you voiced that to the representatives of  
32 all these other Locals?

A. Yes, of course.

Q. Now, in the area, and if you don't mind, just to shorten the record, I am going to refer to this as 262, 189, Group 1, 546, 547, 638, 547, 571, and 320, as your bargaining group or your group of Locals, just to avoid repeating those numbers.

Does your group of Locals within the territory they embrace have as members virtually all of the qualified Meat Cutters in that area save and except men who may run and own their own shops and are owner-operators and cut their own meat?

A. Yes, sir, they do.

33 Q. There is no reasonable or substantial supply of butchers for an operator in the area of your group, save through the membership of your Union, isn't that correct?

A. Of the group of local Unions? Yes, sir, you are right.

Q. Mr. Kelly, I hand you a 2-sheet document marked Plaintiff's Exhibit 2 for identification, and will ask you if that is a letter sent out by you over your facsimile signature to the membership of 547, on or about February 2, 1954, disregarding the scratchings and notations that have been made on it.

A. Yes, sir, it is.

Q. You now have the document before you. Will you be kind enough, Mr. Kelly, to refer to your opening sentence, reading: "Recent newspaper articles being prepared by the heavy chain store advertisers indicate a campaign to bring about night meat sales."

Did you intend your members to understand by that that heavy chain store advertisers were writing and preparing newspaper articles which they had inserted in the Chicago press?

A. That the chain stores themselves were doing this, you mean?

Q. Well, your sentence reads—

A. Yes, sir.

Q. (Continuing):

"Recent newspaper articles being prepared by the heavy chain store advertisers."

Now, as I read that, you are saying that heavy chain store advertisers were preparing newspaper articles, news articles. That is what it says, doesn't it?

A. Yes, it does.

Q. Now, what heavy chain store, heavy chain store advertisers, did you know at that time that had prepared any newspaper article?

A. I don't know if there was any particular chain store that was being named in this general sense.

35 Q. Please answer my question, Mr. Kelly.

A. I didn't know any particular chain store.

Q. Did you know any chain stores at all that had prepared any newspaper articles?

A. We had received information in the office that the chain stores were behind articles that were being read in the newspapers.

Q. Mr. Kelly, that is not what you told your membership. You told your membership that articles were being prepared by the heavy chain stores.

We have just agreed upon that, and I want to know what articles by what heavy chain store advertiser you had in mind when you passed this information out to your membership.

A. I cannot recall that, sir.

Q. Did you ever know of any chain store advertiser in Chicago that wrote a newspaper article and got it published in any Chicago newspapers?

A. Not directly, sir.

Q. So you then told your members on February 2, 1954, something pertaining to the night meat sales matter on which you had no information whatsoever; isn't that correct?

A. I don't recollect, sir. If we had information it wouldn't have been written.

Q. Is the Jewel Tea Company a heavy chain advertiser?

A. I would say so.

Q. Would you understand that the average member of your Union would understand that maybe Jewel was one of these people who were inveighing against when you were talking about what the heavy chain store advertisers were doing?

A. There could be an inference there, sir.

Q. There would be in any intelligent member, would there not?

A. I don't know that, sir.

Q. You don't know that? Well, there would be—any ignorant member couldn't get that inference?

A. Possibly.

Q. Now, you go on to say:

"A few very greedy chain stores in Chicago and suburbs, who only want to squeeze the small operator to death, are now screaming that in the interest of

Mrs. Housewife, they must keep their markets open at night."

Do I read you correctly?

38 A. Yes, sir.

Q. Now, in that paragraph you were eliminating most of the chain operators in Chicago, were you not? You were just talking about a very few of them, isn't that correct?

A. There are only a very few chain operators in Chicago, Mr. Christensen.

Q. And there were, of course, even fewer who operated in Chicago and in the suburbs, isn't that correct?

A. No, the same amount of chains in Chicago, sir, were in the suburbs, as well.

Q. In 1954, weren't there but a handful of chains who operated both in Chicago and in the suburbs?

A. No, sir, there were as many then as there are now.

Q. There were as many then as there are now?

A. Yes.

Q. You made a choice when you wrote this paragraph, Mr. Kelly, and would you please name the very few greedy chain store operators you had in mind when you wrote that paragraph?

A. I cannot recollect now, sir. To select any one, two, three or four chain stores from this wordage, dating  
39 back to 1954, I just cannot remember it.

Q. You cannot remember who was agitating for night operations in 1954?

A. Yes, I think there was at least two.

Q. And who were they?

A. I believe National Tea was one, and I think Jewel Tea was the other.

Q. All right, now, you were not at this place inveighing against all chain operators, but just probably those two that you have just named, isn't that correct?

A. This is possible, sir.

Q. It is probable, isn't it?

A. It is probable, yes.

Q. You go on to say that "the interest of these major chains is not in the public and never was", sir. Now, what information did you have before you at that time that Jewel Food Stores was not interested in the public?

A. Well, I feel they were interested in the public up to a point.

Q. This is not what you told your members. You told them that the interest of these major chains is not  
40 in the public and never was. That is a flat statement that you made, sir.

A. And then I said that their interest is not and never was—

Q. (Interposing.) Will you please just answer my question? That is not what you told your members, is it?

A. This is what—that is what the wordage says, sir.

Q. The fact is you now concede that Jewel always has been interested in the public up to a point, is that not correct?

A. That is right, sir, yes.

Q. You go on to say "It is a matter of official record that in an employer-labor negotiating meeting of some three years ago, the representative of Jewel Foods, who was  
41 the secretary of the company, stated 'The reason we want night opening on Friday night is to get first whack at the pay check before the buyer can find other places to spend it'", is that not correct?

A. Yes, sir, I did.

Q. And that was a true statement, was it?

A. That was an absolute statement, sir, one that is very true.



Q. Can you object to that statement made by the representative of Jewel, sir, that the food purveyor ought to get first whack at the pay check?

A. I did not say that in this.

Q. Please, just answer my question.

A. No.

Q. You do not object to that, do you?

A. No.

42 Q. That is a pretty good idea, isn't it?

A. That is correct, sir, and I did not say that.

Q. All right, you next say "True American ideals call for a free enterprise system wherein our members should have rightful opportunity of some day owning their own business", and by that I take it that you mean that a working butcher, paid for wages, assuming he was a good butcher, got good wages, saved his money, might some day accumulate enough to make a down payment on a butcher shop and open his own store?

A. That is right, sir.

Q. That is what you had in mind, isn't it?

A. Yes, sir.

Q. And it was your idea that the business world should be so regulated that your members could have the opportunity readily of progressing from the employee class into the owner class?

A. I had hoped so, sir.

Q. I did not hear you.

A. I had hoped so, sir.

Q. That is what you had in mind at that time?

A. That is correct.

Q. And you wanted to protect that believed right  
43 or that philosophy of yours, and I am not quarreling with it, by restricting the hours for the sale of meat?

A. No, sir, I have not said that.

Q. But you thought that all the chains were doing by

pressing for a night sale of meat—the whole purpose of that letter is to argue against the night sale of meat, is it not?

A. I would say yes, sir.

Q. And you were endeavoring to persuade your five thousand members that the night sale of meat might somehow interfere with the possibility that some day they could move out of being employees into being market owners?

A. Yes, sir.

Q. Your next sentence says—or the next sentence—the second next sentence says “Reliable information at hand proves that at least three of the four major chains have joined hands in a concerted plan to turn the buying public against the meat cutters union.”

Would you please name the three major chains that you had this reliable information on as you claim?

44 A. Yes, sir, if I remember correctly, that was the A&P, National Tea and Jewel.

Q. And who was the other major chain—fourth one?

A. Kroger.

Q. Now, what was this concerted plan of those three people that you had in mind that was designed to turn the buying public against the Meat Cutters Union?

A. It was felt by the organization at that time that those three operators were responsible for some of the articles that were appearing in the newspapers.

Q. So that instead of having reliable information, you had a feeling by your organization, is that not correct, Mr. Kelly?

A. I think it went farther than that, Mr. Christensen.

Q. All right, and what was this reliable information that you had that those three chains were trying to damn you in the eyes of the public of your organization?

A. I do not recollect that at this time, sir.

Q. Did you have anything?

45 A. We would not have written the letter, if we didn't, sir.

Q. All right, and what was that information—where is that information today, rather?

46 A. I do not know, sir.

Q. You are the custodian of every record and scrap of paper that your union has around, isn't that correct?

A. That could have been oral information.

Q. Who did you get the oral information from if you would have gotten any?

A. I do not recollect that now, sir.

Q. You are unable today to make any oath to one scrap of reliable information that any of these major chains were trying to turn the buying public against your union, is that not correct?

47 A. I have no such information.

Q. And as of this moment you have no recollection of what it was that you had in mind or claim to have had in mind when you wrote that sentence, isn't that correct?

A. All I remember is that we had oral information, Mr. Christensen. What the information itself was, I do not recollect.

Q. Or where you got it, nor what the information was, is that correct?

A. No, sir, I do not remember that.

Q. And with as long experience as a union organizer, starting out under the tutelage of your father, you know a sentence like that would infuriate your membership against these three of the four major chains, would it not?

A. I wouldn't think so, sir.

Q. They would like to know that Jewel was trying to turn the public against their union?

A. If it were true, sir, I think they would like to know that.

Q. And you expected them to believe that it was true?

48 A. That is correct.

Q. And they would not like that information, would they? They didn't like that information, did they?

A. Yes, a good many of our members liked that information, Mr. Christensen.

Q. Well, they would not like to know that Jewel was doing that, would they? They would not like Jewel's activities of doing that, would they?

A. If it were so I would presume they would not like it, sir.

Q. They would be angry at their employer for trying to turn the public against their union, wouldn't they?

A. I don't know that they would be angry.

Q. You don't know?

A. No.

Q. Was it your intention in writing this letter to make them happy with Jewel and thinking that Jewel was a fine organization?

49 A. No, just merely to state the facts that we considered we had at hand at that time.

Q. It was not your intention to make them happy? Was it your intention to make them displeased, then, with their employer?

A. No, sir.

Q. Just to pass on information?

A. That is correct, sir.

Q. You had no notion in your mind as to how they would react to it?

A. No, sir, it is very hard to gauge. As I say, that is very hard to gauge.

Q. At that time you had no notion as to how they would react to that sentence?

A. I never have, sir.

Q. Do you wish this Court to believe that your members have kept you in office to these many years and you have no notion as to how the average butcher reacts to trade information?

A. No, they are a very hard group of people to—

Q. (Interposing.) And is that what you wish this Court to believe?

50 A. What is that question again?

Mr. Christensen: Would you read the question?

(Question read.)

A. That is right, sir; I do not.

Q. Now, in your next paragraph, as you are looking at it, Mr. Witness, reads: "Don't be misled into changing your minds by any picture that supervisors might paint regarding additional money you might earn. Mr. E. E. Hargrave, a vice president of Jewel Foods, has already said that. 'Self-service meats would only require the services of one meat cutter between 6:00 and 9:00 p.m.'"

I take it that the quotation ends there, although it is not indicated upon the document, and then the writer, or as the writer, you go on to say, "So you who work on all day long do not have enough to do should cut additional meat to be sold at night without you gaining financially in any way."

Did Mr. Hargrave make that statement, or the state-  
51 ment, rather, which you attribute to him there?

A. If I quoted Mr. Hargrave, I am sure he made the statement, sir.

52 Q. That is your best recollection?

A. Yes, sir, it is.

Q. So that prior to this time, the 2nd of February, 1954, Hargrave had made you a proposition as one of the



representatives of these butchers that they were pressing to have these men stay away at night from their families, that they would in the self-service system and only need one meat cutter between the hours of 6 and 9 P.M., isn't that right?

A. I would say so, sir. Yes, sir.

Q. Now, is it true that your members at that time actually did not have enough to do?

A. No, sir. They had plenty to do.

Q. So the statement that you made to them here was an error, wasn't it?

A. No, sir, it was not an error.

Q. Well, as I read it, you say:

"So you who work all day long and don't have enough to do should cut additional meat."

That's what you told them, isn't it?

A. I believe it was with sarcasm that statement was made, sir.

53 Q. Of course, Mr. Kelly, you are without information as to how the average butcher thinks. You have just told Judge La Buy that. How did you think the reader of this letter was to think your words did not mean what they say, that you were using sarcasm?

A. I think the reader of this letter knows pretty well the tone that I use in my letters, sir.

Q. Well, in your negotiations—you talked this matter over with Mr. Hargrave, apparently, before you wrote this, isn't that right?

A. Yes, sir, I would think so.

Q. There isn't any doubt about it, is there?

A. If I quoted Mr. Hargrave I certainly talked it over with him, sir.

Q. Now the answer to my question is there was not any doubt about it, and isn't the simple answer to that question, "Yes"?

A. Yes.

Q. All right. Had Hargrave ever, at any time, prior to this date, told you that he wanted your butchers to cut more pounds or more tonnage of meat per eight hour day?

54 A. He never told me that, no, sir.

Q. And he had never complained to you about the general productivity of your members, had he?

A. No, sir.

Q. It's been a long practice with Jewel when market volume or volume of work increases to increase market personnel proportionally, give or take a little bit? It is a matter of judgment, I understand. You cannot measure these things precisely.

Hasn't that been the practice?

A. No, sir, it hasn't.

Q. It has not?

A. No, sir.

Q. You have never in the last six, seven, eight contract negotiations, presented an issue or demand by your Union to increase the personnel in any market, have you?

A. No, sir, not to increase personnel.

Q. You go on to say, if you will refer to your letter, Mr. Kelly:

55 "Reporters from newspapers handling chainstore advertising have discarded and misquoted statements from your Union, so as to make the employer look good and your Union bad."

I read you correctly, sir, do I not?

A. Yes, you do.

Q. I take it you were pretty angry when you wrote that sentence?

A. No, sir, I wasn't angry.

56 Q. You were not angry?

A. No, sir.

Q. That you had been misquoted and the organization you are paid to represent had been made to look bad in the newspapers?

A. No. I wasn't a bit angry, sir.

Q. You were not angry about it?

A. No, sir.

Q. What does it take to make you angry, Mr. Kelly?

A. More than that, sir.

Q. You thought, nevertheless this was something that your members ought to be informed of?

A. Yes, I certainly did.

Q. And you were upset enough about it to try to straighten them out?

A. This is correct.

Q. But you were not angry about it?

A. No, sir.

Q. Now, what statement by either you, Emmett  
57 Kelly, or anybody else, had been misquoted by any reporter, by any newspaper handling chain store advertising?

A. I cannot pin down the name of the individual at this time, sir. I remember distinctly that there was a series of articles going back and forth in the newspapers at that time—

Q. Mr. Kelly, please, I didn't ask you the name of any individual.

A. I can't remember the statement, sir.

Q. You go on to say:

"They will not print the picture, because they want the millions of dollars they profit from that advertising."

Who do you refer to by "they"?

A. The newspaper, sir.

Q. What newspaper?

58 A. The newspapers who apparently were writing these articles.

Q. Which newspaper?

A. Well, the Tribune, for one, was doing this, sir.

Q. The Tribune was refusing to print the truth because it wanted a lot of advertising, is that what that sentence says, then?

A. That's what the sentence says, sir.

Q. Any other newspaper?

A. I can't recollect that, sir.

Q. So we are not talking about "they", but we are talking about:

"The Chicago Tribune will not print the truth, because they want the millions of dollars they profit from chain store advertising"?

A. There could be trade store publications.

Q. Were there?

A. It's possible; yes, sir.

Q. Which ones were they?

59 A. If I remember, it was The Supermart News.

Q. The Supermart News. Anybody else?

A. No, I can't remember anybody else, sir.

Q. (Reading):

"If the chains really want to lower the cost of meat," as they say, and I am quoting your language:

"... why don't they shut off some of this foolish advertising which nobody reads, and show it in a decrease in the price of meat."

Do I quote you correctly?

A. You certainly do, sir.

Q. Did you believe that statement when you wrote it?

A. 100 per cent, sir.

Q. Do you believe that nobody reads the chain store advertisements?

A. Some people possibly, sir.

Q. Then you did not believe what you wrote, did you? You lied to your members?

Mr. Dunau: Objection, your Honor.

The Court: Sustained.

60 By Mr. Christensen:

Q. You misrepresented to your members your own belief?

Mr. Dunau: Objection, your Honor.

The Court: Overruled.

A. I don't think so, sir.

Q. Mr. Kelly, you state in here to your members that: "Nobody reads chain store advertising."

That is your plain verbiage by a man who has had three years at Notre Dame University, isn't that right?

A. Yes, that is correct.

61 Q. And you didn't believe that statement when you wrote it, did you?

A. Yes, I believed it or I wouldn't have written it, sir.

Q. You believe that nobody read chain-store advertising?

A. Yes, I did, sir.

Q. And you think the advertising that the chain stores do is foolish?

A. I think so.

Q. Now you go on to say:

"This is not the gaslight era, nor is it the days of the steam calliope when this Union thirty or forty years ago went around to the markets and closed them down at decent hours."

You were not a Union official in the gaslight era, were you, Mr. Kelly?



A. No, sir, I was not.

Q. But as a boy you at least worked in a market in the tail-end of what we might call the gaslight era?

A. I was one of those who went around to the  
62 markets as a boy to help close them down, sir.

Q. How did you close them down?

A. We used to meet with my father and other officials of the Union on Sundays and at nights after 6 o'clock and go from market to market.

Q. And what would you do?

A. Well, I suppose I was used as a decoy.

Mr. Christensen: I would be the one who would make the purchase of meat in order to determine if the shop was open.

Q. You went in pretending to be a bonafide customer?

A. Correct, sir.

Q. To see if the market operator—

A. If he was working for the Union.

Q. You deceived the market operator?

A. I don't know, sir. I was only a boy.

Q. Do you understand what a decoy is?

A. At this point I do.

Q. How old a boy were you?

A. Ten, twelve, thirteen.

Q. I assume you have had some religious training?

63 A. Considerable, sir.

Q. Well by ten I assume with your religious training you had been through the Ten Commandments?

A. I would think so, sir.

Q. And you had not learned at ten what "deception" was?

A. I had learned to honor my father and mother. I was honoring my father, sir.

Q. And willing to bear false witness and come in under false colors in order to honor your father, is that correct?

Mr. Dunau: Objection, your Honor.

The Court: Sustain the objection.

By Mr. Christensen:

Q. Now, Mr. Kelly, at that time the average market dispenser of meat in the Chicago area was owned by a family or two or three partners, was it not?

A. I would think pretty much so, sir, yes.

Q. And he would have one, two, three paid, butchers working for him?

A. He could, sir.

64 Q. Does that describe the size of an average operation?

A. The average operation would be like that, yes.

Q. Now tell the Judge how they kept the meat from spoiling in those days?

They had an ice box, didn't they?

A. Yes, sir.

Q. Where was the ice box located?

A. Within the store, sir.

Q. In the back of the store?

A. As a rule.

Q. And they could not keep the meat out very long or it would spoil? They took out just enough to cut from at the time and would have to be running back and forth from this man-sized ice box that a man could walk into?

A. Yes and no. It depended on the type of merchandise. Smoked items, they kept out.

Q. I am talking about fresh items?

A. Fresh items in the main were kept in the refrigerator.

Q. That refrigerator was an ice box?

A. Yes, sir.

65 Q. And the light in the average store was a gas jet, was it not?

A. I believe you are preceding my memory a little bit. I have heard it was, yes.

Q. Well, Mr. Kelly, I don't know how good your memory is. It has been rather amazing to me this morning. You are talking about the gaslight era.

A. I remember the gaslights on the street, sir, but not in the house.

Q. So that when you are talking about the gaslight era in here you are not talking about gas lights in butcher shops?

A. I don't remember them that way, sir.

66 Q. Mr. Witness, in the gaslight era that you are talking about of meat markets, it is a fact, is it not, that by and large markets were not even heated in the wintertime?

A. Yes, sir, I would agree to that.

Q. They would leave the door open to get the benefit of the cold air as an aid to keeping their meat?

A. They did, sir.

Q. And the meat was delivered from the wholesalers or purveyors of it to the individual markets by horse and wagon, was it not?

A. It was.

Q. Unrefrigerated in any way?

A. That's right.

Q. Now, you never had any information, did you, that Jewel wanted to go back in the year 1954 to operating markets under those conditions, did you?

A. The paragraph doesn't have reference to that, Mr. Christensen. Of course I didn't.

Q. All right. In your next to the last paragraph,  
67 you stated:

"It is just too bad we can't get the proper cooperation from the retail clerks, so that we could make this unanimous. It certainly would be easier if we could."

What would have been proper cooperation from the retail clerks?

A. A uniform closing of both sides of the store, sir.

Q. And what were the retail clerks doing in 1954 that was not proper cooperation?

A. They were not cooperating with the meat cutters' Union in having a 6:00 P.M. closing operation.

Q. They were letting stores operate much later so far as their members were concerned; isn't that right?

A. In the Chicago area; yes, sir.

Q. And I notice that you speak in here,  
"We can't get the proper cooperation."

Do I read from that that you had tried to get what you thought was cooperation and failed?

A. Yes, for many years, sir.

Q. You had gone to them and importuned them to  
68 insist that their people stop work at six o'clock; is that correct?

A. We had met with them on the subject of cooperating together on the closing at 6:00 P.M., sir, yes, we did.

Q. And asked them to see that the grocery department of the stores refused to sell groceries after six o'clock, isn't that right?

A. Yes, that we did.

Q. You conclude:

"With your solid support and cooperation Chicago and suburbs will always close every night of the week at the Union closing hour of 6:00 P.M."

Did you mean that when you wrote it?

A. Yes, sir.

Q. Do you mean it now?

A. Yes, sir.

Q. You have never varied from that in your view or in your exercise of leadership in the Union, have you?

A. In my individual view? I have not.

69 Mr. Christensen: Please repeat the question.  
(Question read.)

By the Witness:

A. I have not.

By Mr. Christensen:

Q. You meant it then and you mean it now?

A. Yes, sir.

Q. That meat markets will always close every night of the week in this area at 6:00 P.M.?

A. With the solid support and cooperation of the membership, yes.

Q. Yes, you need that, of course, to implement it?

A. Yes, of course.

Mr. Christensen: Now, if I may have the letter. Mr. Kelly, I will offer Plaintiff's Exhibit 2 for identification, into evidence.

70 Mr. Dunau: No objection to its receipt in evidence.  
The Court: It is received.

(Said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT 2.)

72 By Mr. Christensen:

Q. Mr. Kelly, I show you a placard or a sign, which has been marked Plaintiff's Exhibit No. 3, reading "Pursuant to agreement with Amalgamated Meat Cutters, market closed after 6:00 p.m.", is that correct?

A. Yes, sir.

Q. Do you recognize that as a sign or placard that was displayed in Jewel stores in this area after discussions with you as to a proper sign display, sir, announcing to the public that they could not get meat after 6:00 p.m.?

73 A. Yes, sir, I do.



Q. And prior to this sign, sir, had there been another sign posted there?

A. Yes, there had.

Q. Did you object to the other sign or signs?

A. To the wordage on the sign, yes.

Q. Why did you object to them?

A. Because, as I remember, in the other sign it—the entire onus was placed upon the union, whereas actually it was an agreement between both parties that the market would be closed.

Q. You wanted the sign to say “Pursuant to an industry-union agreement this market” was being closed?

A. Or words to that effect, yes, sir.

Q. And this sign, in your humble judgment, stated the truth in 1954, 1955 and 1956, and even today?

A. That is correct, sir.

Mr. Christensen: I will offer the document into evidence.

Mr. Dunau: No objection, your Honor.

The Court: Received.

74 (Said document so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT 3.)

By Mr. Christensen:

Q. I think it will help you, Mr. Kelly, if you will just keep those minutes in your hand.

Did you attend a membership meeting of Local 546 on October 16, 1955?

A. Yes, sir, I did.

Q. Was the purpose of that meeting to have the members pass upon a contract that had been worked out between the industry generally and your affiliated group of locals?

A. Yes, it was.

Q. And all of those affiliated locals that we talked about

earlier this morning, either on that day or at a meeting like this, held a similar meeting to pass upon an identical contract except as it may have changed the geographical jurisdiction and the name of the particular local, is that not correct?

A. That is right.

Q. Who is Mr. Thomas Gorman? Who was Mr. Thomas Gorman at that time?

75 A. He was and is president of Local 546.

Q. Did he address the meeting?

A. Yes, he did, sir.

Q. Did he point out that Local 546 is tops in the meat cutting craft, with the best contract in the United States, and it will continue to enjoy the best contract?

A. Yes, sir, he did.

Q. Did he tell the members that locals throughout the country have besieged the officials of 546 to give them copies of your 546 contract?

A. Yes, he did, sir.

Q. To use as a model for the country so they could try and do likewise?

A. I presume so, yes, sir.

Q. And after they looked them over, did he tell the members that after the various officials throughout the country looked them over—did he tell the members that after the various officials throughout the country looked them over that they said that “Emmett Kelly has the key to the store”?

A. I believe he did say that, yes.

Q. Did he also tell them that there was one local missing from the meeting today and from the group, and  
76. that it was because of irresponsible leadership of that organization?

A. Yes, he did, sir.

Q. Did he tell the members that if there is any viola-

tion by any of them of the contract and they are brought before the executive board, to be aware of your executive board because it is a merciless group?

A. If they were at fault. You did not include that statement, Mr. Christensen.

Q. Well, he told them what I said, didn't he?

A. Yes, in part, he did.

Q. And he said "If you are at fault"?

A. Yes, sir.

Q. And then did you get up and tell them what the fault had been that resulted in one local no longer being a member of your group?

A. I did, sir.

Q. And you told your members and these other affiliated locals that, did you not, that were there at that time—they were there at that time, weren't they?

A. The other—I beg your pardon, but I did not  
77 hear you.

Q. At this particular meeting, didn't you have the other affiliated locals there with you?

A. Not to my knowledge, sir.

Q. Well, apparently you had a representative of No. 55, 571, 320, and 612, and I assumed that—

A. (Interposing.) Yes, they were there, that is right.

Q. I assumed that their members were there also.

A. No, they were not.

Q. They were not?

A. No, they were not, just their officials.

Q. All right, and did you then tell the membership that Local 350, which covers the Gary-Hammond area, was no longer a member of your negotiating group, and that Local 350 had been asked repeatedly to police their territory for female help and Friday night operations, which is what "we have been fighting against all these years"?

A. Yes, I did, sir.

Q. And you have been fighting against female help in butcher shops for years, have you not?

A. Yes, sir, we have.

78 Q. The other thing was Friday night operations that you had been fighting against, is that not correct? In other words, you had been fighting against that for years?

A. Yes, sir.

Q. And that is what your executive board had been merciless about, is it not, that it was a fault to work Friday nights?

A. No, sir, I did not interpret it that way. I do not interpret it that way.

Q. I see. Well, Mr. Gorman made his statement about your executive board being merciless in connection with the dropping of Local 350 from your bargaining group,  
79 did he not?

A. Coupled with other things, he did, sir.

Q. Then later on, and I refer you to the foot of that long paragraph on page 3, Mr. Kelly, and did you tell the members that Local 350, and that is the Gary-Hammond local, no longer bargained with your group until the leadership is changed, or they consent to follow a pattern set down by the Chicago local unions?

A. Yes, sir, I did.

Q. The fact of the matter is that you voted Local 350 out of your bargaining group because they permitted female help and Friday night operations, isn't that right?

A. You mean the entire group voted 350 out. Yes, we did, sir.

Q. Isn't that correct?

A. Yes.

Q. Now, at that meeting, and I refer you down towards the foot of page 4, were the members told that they would

vote upon the entire contract that was then presented to them, sir, as an entirety?

A. Yes, sir.

80 Q. They were accorded no opportunity at that meeting to vote on it section by section, were they?

You may consult the entire minutes, if you wish.

A. They voted on it as an entirety.

Q. And they had no opportunity of voting on it section by section?

A. No, sir, they did not.

81 Q. At that meeting did you stand up and tell the membership what the employers demands were, including one for that operation?

I refer you down past the middle of page 6, Mr. Kelly?

A. Yes, we did, sir.

Q. And did you tell them that the night operation clause, that some of the operators in any event had suggested, was designed to give the benefit to the operators and take into consideration department store markets and possibly through a round-robin operation:

"We would eventually be open every night in the week."

A. Yes, I did, sir.

Q. That: "Naturally the negotiating committee took a firm stand against"?

A. That's right.

Q. And did you tell them at the tail end that you had in writing, "Somebody would take you to Court in litigation regarding the female classification of night operation"?

A. Yes, I did, sir.

82 Q. And did you tell your members that you had informed the employers' group that personally you never have had and you never will have any intention of



selling out the membership regarding Friday night operations?

A. Well, there is more to that statement, sir.

Q. Yes. Just did you tell them that?

A. Yes, I did, sir.

Q. And that:

"If it is going to be done it will have to be done in Court"?

A. I did, sir.

Q. Have you ever varied from that position at any time?

A. No, sir. I haven't.

Q. And have you used your influence, as Chairman of the Bargaining Committee, to promote that view amongst your co-bargainers and Union brethren?

A. No, sir, I haven't.

Q. You have not?

A. No, sir.

Q. Now turn, if you will, if it will help you, turn to the top of Page 7, Mr. Kelly.

83 A. Yes, sir.

Q. Did you stand up on the rostrum and tell the members that:

"Each year negotiations have been getting tighter, especially sitting as we are here in Chicago just like a sore thumb with no night operation or female classification when it is all around us"?

A. I did, sir.

84 Q. What did you refer to that "Chicago is sitting like a sore thumb with no night operation when it is all around us"?

A. Well, I presume I was pointing out the fact that on the Indiana side and on the Wisconsin side, there was night operation, and out in the country towns—

Q. And out here? (Indicating.)

A. Yes, sir.

Q. All around us?

A. That is right, sir.

Q. Except we have got a blacked-out area, which is roughly Cook and Lake Counties, is that right?

A. If you may call it a blacked-out area, we have, sir.

Q. That's a rather startling thing, and it is observable to everybody, and "it sticks out like a sore thumb," is the way you put it?

A. I did that.

Q. Now further on the page, did you tell the members that you had conceded the right to the employers to  
85 Cry-O-Vac, that Cry-O-Vac wrapped hams off the premises of the stores?

A. I did, sir.

Q. Just for the benefit of us laymen, I take it that Cry-O-Vac is one of these new plastics or cellophane varieties that I don't quite understand?

A. Yes, it is, sir.

Q. You told them that you had given them the right to wrap Cry-O-Vac hams off the premises; that you gave them permission to sell them only up until 6:00 P.M.

Did you state that to your members?

A. Yes, I did.

Q. At the top of the next page, did you tell your members you had given this permission to A&P and, in fairness to competition, you had to give it to all other employers?

A. I did, sir.

Q. And that is the term you used, "permission"?

A. Yes, sir. That is what the minutes reflect.

Q. Well, that is your recollection?

A. Yes.

86 Q. That is the term you used, "permission"?

A. Yes.

Q. The Union was giving permission to the employers as to when they could sell their product?

That is correct, isn't it?

A. Yes, sir. The minutes so state.

87 Q. Mr. Kelly, do you have in your hands, do you, a copy of your Local 546 minutes of a special contract meeting on Sunday, November 24, 1957?

A. I do.

Q. In the 1957 negotiations had Jewel made you a separate offer on its own behalf?

A. Yes, they had, sir.

Q. Did that embody the night sale of meat?

A. Yes, it did.

Q. In self-service stores?

A. In both, I believe, sir.

Q. Well, for the record, and because some of the learned jurists who may pass on this record may not do the family shopping, in a self-service meat market, is it a fact that there are frozen, there are refrigerated, electrically  
88 refrigerated counters in which meat can be displayed without spoiling?

A. Yes, sir, there is.

Q. Basically, those counters are long bins made as attractively as a manufacturer can make them? It has refrigerating equipment on the bottom of the bin and around the sides, but the top is open, because cold air stays down, it stays cool inside this open bin? Isn't that right?

A. That's about right, sir.

Q. And they are at a little above waist height, so that the shopper can walk along and look at the meat that is displayed in this long bin or refrigerator counter?

A. Yes, sir.

Q. And in the self-service system before the meat is placed in the counter it is cut into a cut suitable for retail purchase?

A. That is right.

Q. Wrapped in cellophane or some clear wrapping and a stamp placed on it indicating the variety of the meat, the weight of the particular piece and the price to the  
89 customer?

A. That is right, sir.

Q. So that all the housewife or the shopper has to do is to walk along the counter and she can look at the beef selection or the pork selection or whatever it may be and see if there is a piece in there that is what she wants to buy?

A. Yes.

Q. Then make her selection, put it in her cart or basket that is customarily used in modern markets, and without saying a word to anyone, take it along with whatever other purchases she makes to a so-called checker who looks over what the shopper has, totals up the bill and checks the money?

That is the way meat sales are handled in a so-called—in a self-service market, isn't it?

A. Yes, sir.

Q. And customarily there are working butchers in attendance at the counter or they can be summoned by ringing a bell so that if the shopper does not see the particular cut or the size, if she wants a two-pound steak instead of a three-pound steak she can summon the butcher and in  
90 the back room he will cut a piece tailored for her specifications, if he has it available?

A. That is right, sir.

Q. That system of marketing meat was a physical impossibility in the gaslight era, was it not?

A. Yes, it was, sir.

Q. And it has actually only been adopted and a physical possibility roughly within the last ten years; more or less?

A. That is right, sir.

91 Q. In the modern supermarket and stores, and in all of Jewel stores, I believe you are familiar with all or most of them, you have what is known as a Grocery Department and a Market Department, which is the Meat Department, isn't that right?

A. That's right, sir.

Q. And the Grocery Department, of course, embraces dry groceries, oat meal, flour, spices, everything else, produce—that term refers to green goods, generally, does it not?

A. Yes, it does.

Q. Vegetables, the like of that.

Milk, cheese, and then meats, both fresh and frozen, or smoked or canned or otherwise prepared. That is the general setup of a modern food store, and it is the setup basically of all of the Jewel stores, is it not, with few exceptions?

A. Yes, it is.

Q. And you are familiar, are you not, in a general way, that, with a handful of exceptions, Jewel for several  
92 years has sold all its meats through the self-service system?

A. I am, sir.

Q. At this meeting of November 24, 1957, did you read to your membership a legal opinion to the effect that a restriction by industry union agreement as to the hours in which competition in the sale of meats could be engaged in, in the Metropolitan area of Chicago, was a violation of the Anti-Trust laws?

A. Yes, I did, sir.

Q. And did you tell them that Jewel had presented that opinion to you and told you about it during the negotiations which had taken place during the fall of 1957?

A. Yes, sir, I did.



Q. Did you tell your members that that course of action by Jewel is what you would call negotiating with a  
93 gun in your back? I refer you to about the middle of your Page 9, Mr. Kelly.

A. Yes, I did, sir.

Q. Then did you say to the membership if they want a contract without night operation, "We will take our chances with Court action, and if night operation comes to Chicago, we thank Jewel Tea for it"?

A. I did, sir.

Q. Did you further tell them that as they might have observed from the way you had described the negotiations, that Jewel Tea had had no part of the contract as presented by the employers?

A. I did, sir.

Q. Jewel was standing alone against the industry, isn't that right?

A. I don't know if there is—

Q. What you told the members in substance?

A. No, sir, I didn't.

Q. Well, I assume this is not a verbatim quote of your words, but it says,

"As you have noted up to this point, Jewel Tea has  
94 had no part of the contract as presented by the employers."

Now, I don't want to put any words in your mouth at all, but I take it that you are telling the members that Jewel Tea was standing over here and the rest of the industry was taking some other position, and Jewel alone was insisting upon this night operation and was threatening you with Court action?

A. Yes, sir, I told them that.

Q. That was substantially the fact, as the way things stood as of November 24, 1957?

A. That is right.

95 Q. So that it is at that point there had been an agreement as to the terms of the general contract between your negotiating committee, tentative agreement subject to ratification, and the industry, except Jewel?

A. Yes, sir.

Q. Turn, if you will, to your Page 15. As I understand it, at this meeting of November 24, 1957, you are still narrating as accurately as you can, do you remember, what had gone on in the '57 negotiations, and you are describing where you stand, and you said that an offer had been made in which you had made concessions and the employers' group generally had made concessions,  
96 and to find out where you stood in those negotiations some days before this meeting, you asked that a poll be taken by the employers who were bargaining with you to determine their acceptance of the final Union demand and your final Union demand excluded night operations, isn't that right?

A. This is right, sir.

Q. And the results were as follows: Associated Food Dealers, yes, they would take the Union proposal?

I am getting my information from Page 15, Mr. Kelly.

A. I understand. I have it here.

Q. Del Farm Foods. That is another chain, isn't it?

A. Yes, sir.

Q. Operating several stores?

A. Yes, sir.

Q. They said, yes.

National Tea Company. That is a major chain operating a good many stores?

A. Yes, sir.

97 Q. A conditional yes?

A. This is where I wanted to change my thinking from the previous statement and where the confusion came

in to my mind, because earlier you said Jewel had stood alone. Actually, National Tea and Jewel were standing together at that point—

Q. Yes?

A. (Continuing.) —and that is why this shows as a conditional yes.

Q. All right. There was a difference, however, between National Tea and Jewel, was there not?

A. In what respect, sir?

Q. Well, just let me complete this, and I think you will agree with me, Mr. Kelly.

A & P Tea Company, they are a tremendous large operator, aren't they, A & P?

A. Fair-sized, in this market, sir.

Q. They said yes?

A. Yes, they did.

Q. Kroger Company, yes.

A. Yes.

Q. Table Right. That is Illinois Grocers Associa-  
98 tion. They said yes.

A. Yes, they did.

Q. Goldblatts. That is a department store, with some outlying outlets. They said yes.

A. Yes.

Q. Hillman's, they said yes.

A. Yes.

Q. Save-Sure. That is another—

A. Sure-Save.

Q. Sure-Save. Thank you. They said yes.

A. Yes, sir.

Q. High-Low. That is another chain store operator. They said yes.

A. That's right.

Q. Wieboldt's. They said if Jewel is the only one opposed they voted yes. They will go along with the herd, that is right, sir?

A. That's right. Otherwise, no.

Q. Otherwise, no?

A. That's right, sir.

Q. And then you told your members, and I assume you were telling them the truth:

99 "Jewel offered a flat no to the contract that eighty-five percent of the industry had accepted."

A. I did. I said that.

Q. And that was a—I am not asking you to hold precisely to the eighty-five per cent, but that was a substantially accurate statement, to the best of your knowledge?

A. I would say a very fair statement, yes, sir.

Q. Then did you tell your members that on the Friday afternoon before this Sunday meeting that Ed Vorbeck of the Jewel Tea Company had appeared at the Union office covering their company alone?

A. I did, sir.

Q. You said that was unethical?

A. Yes, sir, I said that.

Q. But nevertheless it was their privilege?

A. I did, sir.

Q. Well, Mr. Kelly, I have difficulty in how one may have an unethical privilege. I don't quite understand what you were trying to say there.

100 A. I didn't say an unethical privilege, sir.

Q. You say it is their privilege?

A. That is right, I did.

Q. But it was unethical?

A. That is correct. I said that.

101 Q. Now, I just don't understand the unethical privilege. What were you attempting to convey in that statement?

A. I was attempting to point out that it had been a part of the industry group throughout the entire negotia-

tions—the majority of the industry—that they had seen fit to accept the union contract proposal, and in view of that it was our view that Jewel should not be in any different position. That was the position of all of the contract negotiators.

Q. And that is all that the union and the industry would conform on the pattern as to hours of competition?

A. Once the agreement was reached between the majority, yes, sir, that is correct.

Q. And that would govern the hours of competition in the sale of meat in Chicago?

A. That is correct, sir.

Q. That was your understanding all the way—that was your understanding of the way those negotiations had gone, that was your understanding of the situation between the parties and that was your understanding that you 102 honestly tried to convey to the members that night?

A. I did, sir.

Q. Now, turn, Mr. Kelly, if you will be so good, to page 22.

A. Yes, sir.

Q. Did you tell the members, and was it a substantially accurate narration of the fact that as a result of the negotiations that had gone on, just concluded just a few days before this meeting of your membership, that there were three propositions for the members, and they should pass on—that there were three propositions for the members to pass upon, and the first one is the majority of the industry offer with no female help and no night operations, and an increase of eight dollars or five dollars for two years in self-serving markets; \$9.50 and \$6.00 in—

A. (Interposing.) I did, sir.

Q. And the second proposition was a proposal by Jewel, the plaintiff here, and National Tea, that the same wage scale with night operations, and with five dollars addi-



tional for head meat cutters and journeymen, wherever  
103 females were employed?

A. Yes, I did, sir.

Q. And then an alternate Jewel offer with the same wage scale, and five dollars additional for head meat cutters and journeymen and no apprentice help, females where employed in the same market, that that offer would not include National Tea?

A. That is correct, sir.

Q. Did you then tell the membership that the negotiating committee consisted of representatives of all of these negotiating groups of the locals?

A. That is right, sir.

Q. And that they recommended the majority of the industry offer?

A. I did, sir.

Q. Without night operations or female help, and you suggested they vote favorably on it?

A. That I did.

Q. Did they do so?

A. They did.

Q. Did they substantially vote down both of Jewel's propositions?

A. Yes, they did.

104 Q. Did you recommend they do so?

A. I did that, sir.

Q. Did you take a strike vote?

A. Yes, we did.

Q. And that was to strike who?

A. Jewel, and National Tea, in the event they did not become a part of the industry contract.

Q. Did you tell the members that you wanted them to vote—that you did not anticipate a strike, but that it would strengthen the hand of your negotiating committee?

A. I did.

Q. And pursuant to that, sir, was the vote, at the foot of page 24, 2,253 in favor of a strike against Jewel and National Tea, 98 against the strike, and 7 blank ballots?

A. I do not show that in the minutes that I have before me, sir, but I am quite positive that is true.

Q. At the foot of page 24, away down there at the bottom of page 24?

A. Yes, that is the correct outcome of the balloting.

105 Q. Now, considering a strike against Jewel alone for the minute, do you have employees so far as—or do you have members or did you have members in every Jewel store in the metropolitan area?

A. Yes, we do, sir. When I say that, I mean the combination of the locals do.

Q. Yes.

A. Yes, sir.

Q. Do you know whether a similar strike vote was taken in the other locals?

A. I cannot answer that, sir.

Q. There has not been a time, has there, in the last years, except with respect to the Indiana local over here in Lake County, where your group of locals, those that we talked about earlier this morning, that at least in dealing with any employer who operates in the jurisdiction of all of them, you have always maintained a united front, have you not?

A. That is quite right, sir, we have.

Q. And whatever, if any, differences of opinion may exist between the locals, those are settled inside your own family?

106 A. That is a fact, sir, yes, sir.

Q. Now, if you were to go on strike, pursuant to the vote you had taken at Jewel Tea, although you hoped you would not have to strike, but if you would have had to strike, what would your local have done and the cooperating locals, so far as you know?

A. I assume that we would have voted together on such a strike.

Q. And that would have meant a notice to all of Jewel's butchers to stay away from work, as the first step, isn't that correct?

A. Yes, sir.

Q. And would you have notified other labor organizations of the strike?

A. Yes, of course.

Q. Including the retail clerks?

A. That is correct.

Q. Did you propose placing pickets at each of the Jewel stores?

A. If required, sir, of course.

Q. And the purpose of those pickets would be two-fold, would it not? That would be not to work and to  
107 advise the public not to come in and buy anything in the store?

A. That would be one point, sir, yes.

Q. And what would be the other point?

A. I would presume to have a sympathetic reaction against the deliveries that might come to the store.

Q. And that would shut the store down, wouldn't it?

A. There would be some possibility of that, sir.

Q. Well, how long could a modern store operate without deliveries, do you have any idea?

A. No, sir, I do not. I have never had a strike to contend with, so I cannot answer that.

Q. Well, you are familiar with strikes that the retail clerks and others have had, aren't you?

A. No, sir, I am not. I am not thoroughly familiar, but only by hearsay.

Q. Don't you realize the fact that if deliveries were shut off, sir, that they would run out of milk and butter in a day or two and that they could not—

A. (Interposing.) I would imagine that they would, yes.

108 Q. And they could not sell any meat because they would not have any membership there?

A. That is correct. That would be right.

Q. And there isn't anybody in this whole area that we could bring in to cut meat, sir, because you have substantially all of the qualified meat cutters in the whole area, isn't that right?

A. That is pretty much accurate, yes, sir.

(Whereupon at 12:30 o'clock p.m. a recess was taken until 2:00 o'clock p.m. of the same day.)

110 Q. Mr. Kelly, would you be good enough to resume the stand?

Before we really get back to where we left off there are a couple of things this morning that I should have perhaps made clear that I did not.

Now, with restriction against night vending of meat that prevails in the self-service stores with these counters which we discussed this morning where the meat is in there, and these placards such as Exhibit No. 3 that are up there, it is a fact, isn't it, that the method of carrying out or implementing the restriction, depending somewhat upon the equipment of the particular store it's simply to spread a paper right across the meat? A piece of brown paper?

A. In some stores, yes.

Q. In other stores it is done how?

111 A. With a wire grill.

Q. With a wire grill that is put over that?

A. It is fastened in the plates.

Q. The meat is in there, it's in the counter? It is not taken out and it is perfectly safe in its refrigerated con-

dition and it is just covered up either with a piece of paper or with a wire grill so that it is visible or partly visible, but the customer cannot get at it?

A. It is not visible, because even in the case of the wire grill, they generally put a piece of paper across it as well.

Q. You can kind of look under the edge of that paper and see the meat that is on—every customer that comes in there realizes that the meat is there?

—It just is covered up with a piece of ordinary wrapping paper spread across, isn't that right?

A. In some cases, yes.

Q. And in most cases, generally speaking?

A. I cannot answer that.

112 Q. Now, going on to this matter of the strike, we are trying to pick up where we left off this noon:

Do you recall we had gotten to the point of where you had testified that a vote was taken in your Local in favor of a strike against you and National Tea on the 24th of November 1957?

A. Yes, sir.

Q. It is a fact, is it not, that you communicated the fact of that vote to Mr. Vorbeck as a representative of Jewel?

A. I believe I did, sir.

113 I assume you also communicated it to someone representing National Tea?

A. Yes, I did.

Q. And it is a fact also that you told them that the other locals in your group had taken similar votes and would go along with it, isn't that right?

A. I cannot recollect that, but I would presume they had taken similar votes, yes.

Q. Do you recall whether you told Mr. Vorbeck what



a strike would mean to Jewel if you had to go ahead with it?

A. No, sir, I didn't tell Mr. Vorbeck anything of that kind.

Q. You have been dealing with him for—you had been dealing with him for several years prior to that time, and I assume you had learned that—that he is conversant with labor matters in a general way and the general way that Unions operate?

A. Well qualified, sir. Yes, sir.

Q. And one well qualified in the labor field where they are representing the field, as you do, or management would know, would he not, that a Union, if it went out on 114 a strike of the kind your members had authorized, would picket, would endeavor to, and probably could, stop deliveries and do the other things we discussed this morning; isn't that correct?

A. I cannot answer that for Mr. Vorbeck, as to what his knowledge of that condition might be, but I would judge his being in the field he should know these things, yes, sir.

Q. They are pretty much ABC things to anybody in the labor field, aren't they, in modern day and age?

A. Well, there is a variance, of course. They pretty much run a rule of thumb, I would say.

115 Q. Mr. Kelly, I hand you a Xerox copy of a letter you sent to your membership under date of November 29,—

Mr. Segall: What year?

Mr. Christensen: Of 1957.

By Mr. Christensen:

Q. (Continuing.) —that is two days after this strike vote that was taken on the 27th—strike that—that is a

few days after the strike vote was taken, taken on the 24th.

And in there you report that Jewel and National Foods have capitulated and would yield to your terms; is that correct?

You reported also to your membership that Jewel had written you a letter stating:

"Under the circumstances we have decided to sign under the duress of the strike vote of your membership."

Do I recite it correctly?

A. Yes, sir, you do.

116 Q. And that was the fact of the matter? So far as you knew it, you were correctly reporting the facts to your membership, were you not?

A. I was quoting from a letter from Jewel.

Q. Then you go on to say in the next paragraph:

"Jewel will, we are sure, attempt to disrupt the fine working conditions that we fought so long to obtain. If night operations and with it, absence from your homes and families comes to the Chicago meat cutters, it will be brought on by the Jewel Tea Company. We have the utmost admiration for the progressiveness of the Jewel operation, but feel that with their expansion, they are riding rough shod over the personal feelings of their employees while in search of the Almighty dollar. Night operation is something brought on not by necessity but by greed. Its history proves that those who want it most are the first to  
117 want out when the one night they wanted becomes seven nights instead. When we have seven nights, which, if Jewel is successful, we ultimately will have, then nobody profits, and those who cry the loudest will be the first to want out."

Do I read your letter correctly?

A. You do, sir.

Q. Now, I will ask you if it is fair to summarize that to say that you were telling your membership that this whole controversy really is a controversy between Jewel on the one hand and the rest of the industry and your affiliated locals on the other, and if it should be that we get night operations, Jewel is responsible for breaking up the industry pattern; isn't that correct?

A. Mr. Christensen, on the first part of your question, may I have it repeated, please?

Mr. Christensen: Certainly.

(Question read.)

118 By the Witness:

A. No, sir, that is not correct.

By Mr. Christensen:

Q. All right; let me refer you to your sentence, Mr. Kelly:

"Night operation is something brought on not by necessity but by greed."

Would you be in favor of night operations if you felt they were necessary?

A. I would have to leave that decision to the membership that I represent. I could not answer that.

Q. I didn't ask you that. I asked you what you would be in favor of?

A. As an individual, if it would be a necessity, I would be in favor of it.

119 Q. And as the chief executive officer of your Local, the dominant Local, you would be in favor of it?

A. If it was a necessity, yes.

Q. Now, what would be a necessity?

A. I do not know.

Q. So these are idle words in here, are they? You don't know what you are talking about?

A. Yes—

Q. You don't know what necessity is? You just stuck it in there?

A. In general, I am pretty sure what I am talking about, Mr. Christensen.

Q. Then please tell me what you meant by necessity.

A. I don't know the necessity, because the necessity in my opinion has never arisen.

Q. Would inability of a substantial number of housewives to purchase their meat between the hours of 9 and 6 p.m., on five days of the week, create a necessity in your judgment?

A. It could—

Q. Your definition?

A. It could create a consideration toward it being 120 a necessity, but I don't think that would be sufficient.

Q. If ten per cent of the housewives couldn't without considerable inconvenience purchase meat, would that create a necessity that would justify the night operation?

A. Not under the present structure of the hours, shopping hours, this could not create that kind of necessity, no, sir.

Q. I didn't ask you that. Now please listen to the question, Mr. Kelly.

If the ten per cent of the housewives in this area we are talking about, your blacked out area, in the view of your affiliated Locals, could not without great inconvenience purchase fresh, red meat during the hours of 9 a.m. to 6 p.m., would that create a necessity for night operations, yes or no, is all I am asking.

A. I would say no, sir.

Q. If twenty per cent of them, would that create a necessity?

A. I would think not, sir.

121 Q. Twenty-five per cent?

A. Mr. Christensen, I can't place a percentage figure on what becomes a necessity in this regard. Now you can raise the figure to seventy-five or eighty-five, and I would still be forced to give you the same answer. I do not know that.

Q. So that if seventy-five per cent, if I understand your answer, if seventy-five per cent of the housewives in the Chicago area couldn't purchase fresh meat save at great inconvenience during the hours of 9 to 6, there still would be no necessity for night operations, under your definition of the word "necessity"?

A. I do not know that, sir.

122 Q. The contract negotiations, in 1957, contained a restriction on market operating hours for the sale of fresh red meat, did it not, 9:00 to 6:00?

A. It did, sir.

Q. The next contract negotiations took place in the fall of 1959?

A. Yes, sir.

Q. At that time, in those negotiations, did Jewel again seek to have night operations?

A. Yes, sir.

Q. Did you resist it, your bargaining group?

A. Yes, sir.

Q. Did Jewel ever cease or voluntarily withdraw its demand for night operations?

A. No, sir.

Q. Did the rest of the industry agree with you to continue the ban on night operations?

A. Yes, sir.

Q. And did Jewel again capitulate, reserving its rights?

A. Yes, sir.

Q. Did roughly the same thing take place in the fall of 1961?

123 A. Yes, it did.



Q. Mr. Witness, I show you Plaintiff's Exhibit No. 124.4 for identification, and ask you if that is the executed contract, between your Local No. 546—and Amalgamated Local 546, sir, covering the years 1957 to 1959, pertaining to service markets?

A. Yes, sir, it is.

Mr. Christensen: Counsel has agreed with me, with your permission, to stipulate that Plaintiff's Exhibit 4 and Plaintiff's Exhibit 5 are respectively the services contracts and the self-service contracts for the years of 1957 and 1959 negotiated in the general manner the witness has testified to.

Plaintiff's Exhibits 6 and 7 are respectively the service and self-service contracts for the years 1959-1961, for the service and self-service markets, and that on each of them, prior to execution, is starred and written in pertaining to the provision as to a limitation on the right-to-strike clause, and that provision states "agreed to by Jewel Company, Inc., unless and until the decision of the United States Court of Appeals for the Seventh Circuit, in the case of Local Union 546, et al. v. Jewel, is reversed," and the same endorsement on the form appears as to Article 5, which is the restriction on market operating hours.

It has also been stipulated that Exhibits 8 and 9 are booklets which are correct copies on the 1961 to 1964 service and self-service contracts. There is no endorsement on them, but that there was a letter of reservation sent in by Jewel, of the same legal tenor and effect as the endorsement shown in the 1959 contract.

I can put the letter in, if you wish, Bernie.

Mr. Dunau: May I see it?

Mr. Christensen: And we have agreed to mark that last recital?

Mr. Dunau: Yes.

Mr. Christensen: It just saves putting the document in.

126 Mr. Dunau: We will so stipulate, your Honor.

Mr. Christensen: I move the admission into evidence of Exhibits 4 to 9, inclusive, with permission to substitute copies of Exhibits 4 through 7, inclusive.

The Court: Admitted. I would like to have a copy here, however.

Mr. Christensen: We will have one for you, sir.

(Said documents so offered and received in evidence were marked respectively PLAINTIFF'S EXHIBITS 4, 5, 6, 7, 8 and 9.)

127 By Mr. Christensen:

A. Mr. Kelly, during this continuing controversy between yourself and the Jewel Company, did you become aware that Jewel was conducting a sampling or questionnaire operation amongst its customers as to their desires with respect to night operations?

A. When was this, please?

Q. I show you a letter you wrote on January 22, 1958.

A. Yes. I was aware.

Q. You became aware of that in early 1958, and you protested it, didn't you, and said it was unfair?

A. I cannot recollect what was in the letter, but I am sure we had some reservation as to the manner in which they were conducting it, yes.

Q. What was your reservation as to the manner in which Jewel conducted it?

A. Offhand I can only remember that we felt the questions were somewhat slanted, that this could be corrected.

That is the only thing that strikes me.

128 Q. You were aware that progressive merchants sample their customers as to their desires?

A. Yes, of course.

Q. To find out at least what the customer thinks is desirable or necessary?

A. Yes.

Q. Has Amalgamated Local 546, or any of your affiliated locals, ever directly or through any agency or advisory group, sampled the public to see what the public thinks be the necessity of night operation?

A. Not the public, no, sir.

Q. Would it make any difference to you what the public thought about it?

A. Yes.

Q. And what percentage of the public would have to think contrary to the way you think to be able to induce you to change your mind?

A. This is a somewhat familiar question, and I believe I answered before that I couldn't answer it. I cannot answer this question.

129 Q. At least 25 per cent of the buying public wouldn't influence you?

A. I can't answer that, sir.

Q. Well, you have testified this morning that you are never going to change your mind about night operations, as I understand it, and you have so informed your membership, haven't you?

A. No, sir.

Q. Now, in a supermarket operation, in the typical Jewel operation, the butcher does not collect the money for the meat that is sold in the store, does he?

A. In the self-service operation?

Q. In the self-service operation?

A. No, sir.

Q. That is collected by an employee known as a checker, who is near the door of the store at a turnstyle or a canal or channel through which the customer must pass, and the checker totals up the goods, whether they be meat, gro-

ceries, or produce, and gives them a slip with the total purchase price and collects the money?

A. Yes, sir.

130 Q. Up until that time in the operation of a store, of course as a customer goes and selects three pounds of beef and then she buys some potato chips and some produce, and suddenly finds that she does not have enough money or changes her mind entirely about the purchase of the meat, she is at liberty to take the meat back to the self-service counter, put it in there, and not complete here purchase, isn't that correct?

A. I would presume so; yes, sir.

Q. Your Union has no jurisdiction over the checkers whatsoever, does it?

A. No, sir, we don't.

131 Q. And you have nothing to say as a Union over their hours or conditions of employment, do you?

A. No, sir, we don't.

Q. If they want to work 15 hours a day, seven days a week, that is not within your jurisdiction, is it?

A. No, sir.

Q. During the 1961 negotiations did Jewel Company, over the signature of E. T. Vorbeck, submit to you an offer?

Mr. Christensen: I will have a copy that I will ask to have marked as Exhibit 10, for identification.

(Said document was marked Plaintiff's Exhibit No. 10 for identification.)

By the Witness:

A. Yes, sir.

By Mr. Christensen:

Q. And did your group reject those offers?

A. Yes, sir.

Q. And was the basic reason for rejection the same

as you have had before, that the rest of the industry, together with you, had indicated acquiescence upon  
132 a restriction of further hours, and you were going to go along with that agreement and reject this offer?

A. We accepted the majority of industry proposal, yes, sir.

Mr. Christensen: I will offer Plaintiff's Exhibit 10 for identification into evidence, if it please the Court.

Mr. Dunau: No objection.

The Court: It is received.

(PLAINTIFF'S EXHIBIT 10 was received in evidence.)

By Mr. Christensen:

Q. Two or three times we talked about these negotiations and, so the record is clear, is it essentially true that in the 1954 negotiations, or '55, rather, '57 and '59 and '61, that at some appropriate time prior to contract negotiations you would inform the industry of what your demands in general were for the ensuing contract period?

A. Yes, sir, that's correct.

Q. And then somehow a group of the leading operators would get together, you would perhaps have a preliminary meeting with them and they would have an informal committee and bargaining would take place running, usually, through several sessions at some place down here in the Loop?

A. In essence this is correct, sir.

Q. And sometimes the employees would have one man as their chief spokesman who would continue on through the whole series of meetings, sometimes they would shift spokesmen? They had no set pattern on that, is that correct?

A. That is quite right.

Q. And at various times, as the negotiations progressed,



you, as chairman and spokesman for the labor side, would ask for a recess and caucus with the representatives of the other Locals? Sometimes it would be the other way around and the industry people would get together and so on. You would horse-trade back and forth?

A. This is absolutely right.

Q. Now there came a time, did there not, when Local 189, outside of Group 1 of Local—

Mr. Christensen: Strike that.

134 By Mr. Christensen:

Q. Group 1 of Local 189 is what I call a subdivision or a portion of Local 189?

A. Yes, sir.

135 Q. And there came a time when except for this subdivision or group of Local 189, night sale of meat was arranged in this surrounding territory; isn't that right?

A. I would say so; yes, sir.

Q. Did you become aware in September, 1962, that the Jewel organization was conducting a survey amongst its employees who were in the jurisdiction of 189, who worked nights, as to whether they objected to it, found it ruinous to their health, or in any way deleterious to their married life, or upsetting to the national welfare, or anything else?

Mr. Dunau: Object, your Honor, to that question. I don't quite see what deleterious to health, welfare to the nation, has anything to do with anything that is at issue in this case. I don't understand it.

136 Q. Did you become aware they were conducting a survey amongst their employees as to whether they objected to working nights as long as they were paid time and a half?

A. I did, sir.

Q. Did you then initiate and spearhead the sending out of return postal cards, such as Plaintiff's Exhibits 11 and 11-A?

137 Q. And so far as you know that stopped that survey by Jewel right in its tracks, didn't it?

A. Frankly, I don't know the answer to that.

Q. You don't know the answer to it?

A. No, sir.

Q. I observe that you required your members to sign their name and address on their returns if they answered this postal card?

A. We asked that they sign it. We received some back without signatures.

Q. And, of course, if they signed, the identity of the workman who said that he was happy to work nights would not be strictly confidential from you or any of the officials of the various local unions, would it?

A. I think the statement on the card speaks for itself.

Q. That is not the question I asked you.

A. Of course, it would not be confidential. The recipient would know.

Q. And the recipient is Local Union No. 189, 262, 320, 350, 546, 547, 571, 612, 638; isn't that right?

138 A. That is right, sir.

Q. So that anybody who signed his name to that and gave an answer that wasn't pleasing to your Executive Board, would know that he might have to appear before that merciless Executive Board, isn't that correct?

Mr. Dunau: Object, your Honor. There is no evidence in this record concerning disciplinary proceedings with respect to—

The Court: Sustained.

Q. Now, how many members were present at the meeting at which Mr. Gorman made that speech about your merciless Executive Board?

A. Knowing the sizeability of our Sunday contract meetings, I would estimate there was upwards of three thousand people.

139 Q. A good many of them are still working for Jewel, are they not?

A. I would think so, yes.

Mr. Christensen: I will offer the document in evidence, and we will furnish you with some Xerox copies.

140 The Court: Received in evidence.

(Said documents, so offered and received in evidence, were marked PLAINTIFF'S EXHIBITS 11 and 11-A.)

Mr. Christensen: Counsel, I wonder if we could have a stipulation that the counterpart of the various contracts we have introduced for '57, '59, '61, were entered into on or about the same dates by these other locals, that is, 262, 189, Group 1, 547, 638, 547, 571 and 320.

Mr. Dunau: I believe we can stipulate as to all except Group 1 of 189, which has a separate contract which is not of the same type as those that are already in evidence.

141 Mr. Christensen: All right.

Mr. Dunau: But it does, Group 1 of 189, does have the same marketing hours provisions.

Mr. Christensen: Yes.

Mr. Dunau: As is true of the other agreements which are in evidence.

Mr. Christensen: Yes. And the other differences are immaterial to this lawsuit.

Mr. Dunau: Yes, sir. They are.

Mr. Christensen: That's all for Mr. Kelly, if it please the Court.

142

*Cross-Examination by Mr. Dunau.*

Q. Mr. Kelly, what is your title at the present time with Local 546?

A. Secretary-treasurer.

Q. Were you elected to that position in 1941?

A. Yes, I was.

Q. And have you been elected to that position by the membership of the Local Union at the expiration of each term of your office?

A. Yes, I have.

Q. Were you elected as a vice-president of the Amalgamated Meat Cutters International in 1941?

A. I was appointed by the International Executive Board to a vacancy that was existing then, and in 1942, I was elected by convention action.

Q. Were you elected in 1942 by the delegates, sir, to the International Convention?

A. Yes, sir.

Q. And have you been reelected at the expiration of each term of your office by the delegates to the International Convention?

A. Yes, I have.

143 Q. Will you describe for us the geographical location of Local 189, a group not in Group 1 alone, please?

A. Well, that is a little difficult to say, except that 189 does butt up against Local 546, and a part against 262, and extends over across into Rockford, and goes downstate as far as Decatur, Illinois.

It takes in many, many communities in that area.

Q. How many Local Unions of the Meat Cutters Amalgamated International are there in the State of Illinois?

A. That is difficult for me to say because I represent District No. 10 as International vice-president, and District No. 3 overlaps and comes into the State of Illinois.

but within my immediate district, the immediate district that I represent, there are seventeen Local Unions.

Q. And there are, then, at least seventeen Local Unions within the State of Illinois, is that correct?

A. Yes, and in fact there are more than that.

Mr. Christensen: Retail, Bernie?

144 By Mr. Dunau:

Q. The Local Unions I am talking about would be the Local Unions representing Meat Cutters in retail markets, and there are seventeen Local Unions representing Meat Cutters in retail markets?

A. No.

Q. Well, how many are there that represent Meat Cutters in retail markets?

A. To my knowledge, in the entire State of Illinois, there would be eleven.

Q. What is the membership of Local Union 189, sir, in Group 1?

A. It seems to me the figure for that area runs somewhere around 500 or 600 members.

Mr. Christensen: Mr. Dunau, if you wish, over part of the evening sometime, we will insert that figure in here. We do not have it, but we will insert it on the face of Plaintiff's Exhibit No. 1, if you wish us to.

146 By Mr. Dunau:

Q. Mr. Kelly, with respect to these exhibits which have been introduced as Plaintiff's Exhibits 11 and 11-A, how many cards were sent to the employees of Jewel Tea Company?

A. Slightly in excess of 1,500.

Q. And did that comprise all the meat cutter members employed by Jewel Tea Company including the group represented by 262, 189, Group 1, 320, 571, 678, 547, and 546, and others?



A. Yes, and others.

Q. What were the others?

A. Local 612, of Joliet, and Local 350 of the Gary-Hammond area.

Q. Then all employees of the Jewel Tea Company in the retail meat market were sent these cards, is that correct?

A. That is correct.

Q. What return did you receive?

A. Out of slightly over 1,500 cards that were mailed out, we had, as of this morning, 759, plus 28.

147 Q. 759 says what, sir?

A. 759 have indicated their opposition to working nights; 28 said they were in favor of working nights.

(Witness excused.)

149 FRED A. WOERTHWEIN, having been first duly sworn, deposeth and saith as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name and address?

A. Fred A. Woerthwein, W-o-e-r-t-h-w-e-i-n.

Q. Where do you live?

A. 3841 Howard Avenue, Western Springs, Illinois.

150 Q. Are you employed by Jewel Tea Company?

A. I am.

Q. What is your present capacity?

A. Grocery Operating Manager.

Q. How long have you been in that capacity?

A. Since August, 1960.

Q. How long have you been employed by the Jewel organization all told?

A. Twenty-nine years and two months.

Q. You have worked up to the various stages of the organization, have you?

A. Yes.

Q. What did you start at?

A. I started as a part time boy.

Q. Then what did you do?

A. Became a clerk.

Q. Then what?

A. A Grocery Manager.

Q. Then what?

A. District Manager for a group of five stores.

Q. Then what?

A. A Personnel manager for a group on the south  
151 side of Chicago that was a division of forty stores.

Q. And then what?

A. Superintendent for that same group of stores.

Q. And then what?

A. I was transferred into Sales—into Development activities in 1958.

Q. Then what, to your present position?

A. Yes.

Q. Now, without elaborating too much will you explain for the record the organizational hierarchy of the two branches of the Jewel Food Store business as between what you would call market operations, what we laymen think of as meat, and the grocery divisions?

A. Well, roughly we have two parallel operations, one which is strictly that pertaining to meats and the other pertaining to all other parts of the food stores.

At the top there is a Meat Operating Manager and a Grocery Operating Manager. Each of us have eight Division Managers. A Division is comprised of approximately 35 to 40 stores.

152 Q. And so you have under you a Grocery Division Manager who has 35 to 40 stores, each of them has a Grocery manager?

A. Yes.

Q. On the market side of the business your counterpart has a Division Meat Manager and he has a so-called Market Manager in each of the stores, is that correct?

A. Yes, sir.

153 Q. In the store itself there is no store manager to whom everyone reports?

A. No, there is not.

Q. As part of your duties during this progression that you have made up the ladder of the Jewel organization, have you had occasion to ascertain with respect to comparable chain store operators, Jewel's position in the industry with respect to the sale of meats?

A. Yes, sir.

Q. For the last ten years, what relative percentage of Jewel's income has been derived from the sale of meats with respect to its total income from its stores?

A. It is roughly 30 per cent of the total sales—are represented by market sales. It varies from 31 per cent to about 29 per cent at the lowest.

Q. That has been a consistent ratio or proportion for the last ten or fifteen years?

A. Quite consistent.

Q. During that time the chain has expanded, but 154 this same division of roughly 30 per cent for the meat and 70 per cent for groceries has persisted?

A. Yes, sir.

Q. Do you have available to you, as part of the records you consult in the operation of your business, business surveys made up by reputable business organizations of your industry indicating what the comparable ratio is in competitive or similar chains, both in this area and throughout the country?

A. I have two studies with me at this moment.

One was put out by the Harvard School of Business, Operating Results of Food Chains in 1960. It was published in 1961.

On Page 33, under "Exhibit 1," the per cent of meat sales to total in small chains is given as 26.60. In the middle volume chains it is 25.70, and in large chains, as 25.12.

A small chain is defined here of less than twenty million dollars of total annual sales.

A middle volume is from twenty to one hundred million dollars annual sales, and a large chain is in excess 155 of one hundred million dollars annual sales.

Q. Have Jewel's sales, total sales, been in excess of one hundred million dollars for several years?

A. Yes, they have.

In addition to that fact—

Q. Do you have another survey there?

A. Yes, The Supermarket Industry Speaks in 1962.

Q. Just before you go on to that, would you please explain who published this?

A. It is a publication put out by The Supermarket Institute. It represents, I think, 6,081 stores throughout the country. It is compiled by Curt Kornblau of Supermarket Industry.

In all of 1961, from the 6,081 representative food chains, the per cent of meat sales to total is given as 25.2 on Page 13.

156 Q. Now, is that a source of information, statistical information, on your industry that is used by the industry generally in assessing their own performance against that of the industry?

A. To the best of my knowledge, it is one of the most reliable of all sources of information.

Q. Based upon statistics furnished by these some six thousand operations?

A. Yes, sir.

Q. Now, has that relative ratio of 25 per cent meat to total sales for the average of the industry, as opposed to Jewel's ratio of 30 per cent meat, existed steadily for several years?

A. Yes; it is something that has been in existence for a great number of years, and it is the—well, this was done really by design on our part. The whole success of Jewel has been built around their markets, and this whole story starts back in about 1938, when Jewel first went into the meat business in a big way, introduced nothing but choice quality meat at that time, and instituted a new trim policy for the purpose of bringing a better product to their customers.

Q. Well, now, you speak with the skill of one who is in the art. What do you mean, "A better trim policy"?

A. Less fat and less bone, sold to the customer.

Q. You mean to take a piece of meat and trim off the unusable portions of it and sell more edible meat per package?

A. Just about pan ready.

The Court: You mean before it is weighed?

The Witness: Before it is weighed, yes, sir.

The Court: That is an important item.

Mr. Christensen: Yes, your Honor. Thank you.

The Court: And I speak from experience.

By Mr. Christensen:

Q. Now, with respect to your operations, which are grocery operations, why are you from a grocery point interested in the meat phase?

158 A. Well, I know from experience that our level of sales is almost totally dependent on our meat level of sales, even to the point where our whole merchandising



program each Monday is built around the product and the type of product that we are going to offer in the market for that particular week. This is done by design.

Q. So that in inducing the housewife, because of the excellence of your meat service, to purchase meat from you, you hope she will also purchase her dry groceries and produce; is that the net of it?

A. Yes, sir.

Q. Was an opinion poll taken of actual Jewel customers in the store on the subject of night operations in the sale of meat early in the year 1958?

A. Yes.

Q. Under whose supervision was that conducted?

A. Under mine.

Q. At that time you were in—

A. I was in Store Development.

Q. Store Development. Will you explain the mechanics and means by which this poll was carried out?

159 A. Well, I have a sample of the form that was sent to the stores.

Mr. Christensen: I will ask to have this marked Plaintiff's Exhibit 12 for identification.

(Said document was marked Plaintiff's Exhibit 12 for identification.)

Q. Tell what was done with these questionnaires, such as Plaintiff's Exhibit 12 for identification.

160 A. I made a distribution in total of 100,000 to all of these stores, with the exception of the stores in Antioch, Crystal Lake, Joliet, Fox Lake, and the Indiana stores, all of which at that time were able to sell meat at night. There was no point in questioning these customers.

Q. So that you questioned in all stores except those that were selling meat at night?

A. Yes.

Q. All right.

A. And I sent varying quantities—there were a group of stores that received 400 of these questionnaires. There was another group which received 600 of these—

Q. May I shorten that, Mr. Woerthwein? Did you send them in quantities based upon your judgment of the number of customers passing in through the particular store—

A. Yes.

Q. Some are big stores and some are small stores?

A. Yes, sir.

Q. Now, how did the customer actually receive 161 these sheets?

A. It varied a little by store, depending on the amount of people they had there. In the larger stores they were passed out by some person in front of the store to the customer directly. In other stores—this is medium volume and smaller stores—they were put out for the customer to take.

In some cases this was put in a stand adjacent to the market on what we called a turkey order taker.

Q. Upon what?

A. It is a little stand that we use for taking turkey orders from customers prior to holidays. This was a stand that she had grown accustomed to.

Q. All right.

A. In the main, these were the two methods that were used.

Q. Were the results then submitted to you ultimately?

A. Yes, sir; they were all sent to me.

Q. Tabulated by you?

A. Only—

Q. Under your supervision?

A. Yes.

162 Q. What did they show?

Mr. Dunau: Objection, your Honor.

By the Witness:

A. Out of the 100,000 that—

Mr. Christensen: Wait a minute.

Mr. Dunau: Objection, your Honor. This survey had not been shown to be admissible in evidence. There has been no groundwork made for the introduction into evidence of the results of this survey.

164 Mr. Christensen: Your Honor, may I ask a question or two more of the witness before you are called upon to rule?

The Court: Yes.

Q. In this survey was any customer interviewed?

A. No, sir.

Q. At the time of this survey was any litigation pending?

A. No, sir.

165 Q. Were any lawyers present at the time these questionnaires were made available to your customers, sir, unless they happened to be customers who, when they were not customers of yours, were out trying to work hard and earn enough money to come in and patronize your store?

In other words, no company attorneys were present, were they?

A. No, they weren't.

Q. Is this simply a questionnaire addressed to the customer without coercion or suggestion of answer, but on its face gave the customer an opportunity to answer the questions thereupon, and to make the indication that the form itself gave the customer the option of making?

A. Yes, it was exactly that.

Q. It was?

A. Yes.

Q. Now, Mr. Dunau was reading from this learned, or unlearned, rather, work. It is not an authority; it is a suggestion. It is addressed usually to those cases in which someone polls people to learn this and other things 166 through those interviews, and is more or less depth, but that is entirely beside the point.

This questionnaire, the Court has a copy of it before it. It was given to the customer, and—well, how many questionnaires did you receive back and finally tabulate answers on?

A. 18,775.

Q. And they were collected over a period of approximately how long?

A. About ten days.

Q. And in every Jewel store in the chain?

A. Except those which I mentioned.

Q. Except those that had night operations. Now, that is correct?

A. Yes.

Mr. Christensen: Any survey, if it please the Court, is subject to this, that or the other criticism. Its weight may be weighed by the tribunal as it sees fit and believes, under the evidence, as to how the particular survey was made.

167 The Court: It is the Court's view that this is not the type of survey referred to in this document from which counsel read, but it seems to me that in order to get this evidence in, that you will have to go a little farther.

170 Q. Were you present at any of your stores or at any of these stores during the time these circulars were put out?

A. Yes.

Q. Did you observe the way they were being handled?

A. I saw the survey conducted in LaGrange, handled via this little stand.

Q. The turkey counter?

A. But there was no connection in that regard with the customer at all. It was at her option.

I can, however, bring in any number of—

Q. (Interposing.) Yes, I understand, but that is the only one you have personal knowledge of?

A. That is the only one I personally remember.

Q. And that you have personal knowledge of?

A. Yes.

The Court: Were those left on the stand and there was no one handling them out to the people?

The Witness: That is correct, in the particular case that I observed.

The Court: All right.

171 By Mr. Christensen:

Q. You testified that you issued instruction to this store manager either to have someone in the larger market to hand these to the customers, sir, as they were leaving or were in the market?

A. No, at the time they entered the store.

Q. When they entered the store?

A. Or at the time they left the store. That was strictly at the option of the particular store.

Q. And in the small stores, they set them up near the meat market counter, or the turkey—

A. (Interposing.) Order-taking stand.

Q. Or the order-taking stand that the customers were familiar with?

A. Yes, sir.

The Court: I think you need a little more evidence than that.

Mr. Christensen: I think so, your Honor, and I will try to supply it if I may hold up now and then I will renew this offer later on.



That is all I intend to offer by this witness, and I  
172 am perfectly happy to have Mr. Dunau cross-examine  
him now, if he wishes, or tomorrow, if I can get the  
survey in.

Mr. Dunau: Then we have no further questions at this  
point of this witness, your Honor.

173 JOHN ALFRED BREWER, called as a witness by  
and on behalf of the plaintiff, having been first duly  
sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Mr. Brewer, will you please state your full name for  
the record?

A. John Alfred Brewer.

Q. Where do you live, sir?

A. 221 Blackstone Avenue, in LaGrange.

Q. Where?

A. LaGrange.

Q. How long have you been in the meat business?

A. Well, directly in the meat business, connected with  
it in some way or another, about twenty years.

Q. What has been your history in the business?

174 A. Well, I have been in more or less of a super-  
visory capacity for those years, and also in the devel-  
opment of self-service meats.

Q. Who have you worked for and what have you done?

A. Well, at Jewel you are speaking of, now?

Q. No.

A. Well, my whole business life has been with Jewel  
and Loblaw.

Q. That is another food chain?

A. That was the chain originally in Chicago that Jewel bought.

Q. All right, and just state what your activities have been in that particular field.

A. In the meat field or in total?

Q. No, in both groceries and meats.

A. Well, I started out as a clerk. Then I graduated to a store manager; then it was to a district manager; and then to a division manager, and then to an operating manager.

During the war I was in charge of both meats and 175 groceries in operations, and then after the war I was given the assignment of developing self-service meats.

Q. When did you switch from Loblaw to Jewel?

A. That was in March of 1932.

Q. And since March of 1932, sir, you have been with Jewel entirely, is that correct?

A. That is correct.

Q. When did you begin to work in the meat department?

A. Well, as I say, that was about in 1942. About 1942 was the first exposure to meats.

Q. And what was your duty in that regard?

A. Well, I was kind of a general all around handyman, I would say in the supervisory end of the business. Then during the war, of course, we did almost everything just to keep things running and to keep them going.

Q. And after the war?

A. Well, after the war we continued weighing meats in with the groceries, and then in 1948 I was given the assignment of developing the self-service meats.

176 From that point on—the self-service market, and from that point on I have been directly connected with meats.

177 Q. Now was Jewel the prime mover in bringing self-service of meats into the Chicago area?

A. Very definitely. We—

Q. Will you tell the Court in a general way what the history of the switch or change from service dispensing or vending of meats to self-service vending of meats, how it took place and what it involved?

A. Well, prior to 1948, we made surveys across the country and the growth of self-service meats.

I personally visited a number of areas, and it was my opinion that this was the way to sell meat. It offered the customer a better deal. In 1948, we decided that we were going to go into the self-service meat method of merchandising meat.

The only area that we could do it in was in Local 189, or Elmhurst, Illinois. That was the first market that we converted from service to self-service in September, 1948. In December of that same year we opened one in Barrington, Illinois. We confined our operations, naturally, to the area in which this method of merchandising was 178 allowed under our Union contract. We continued to develop in that area, Wheaton, Glen Ellyn, Aurora and that area.

Q. That is the area indicated by the wavy line going down Plaintiff's Exhibit 1? (Indicating.)

A. If it is 189, yes.

Q. Local 189, outside of Group 1?

A. That's right.

We did that, and we filled up that void in there in all of the markets we had in markets which were large enough in size to convert at that time.

Then I believe it was in December of 1953, if I remember right, that we were given the go-ahead sign to operate in Chicago proper. From that point on, we converted as quickly as we could, because the one that we had had in operation for five years were highly successful.

It was evident to us that Mrs. Consumer liked it that

way of buying her meat, because of the tremendous increase in sales everytime we made the conversion.

That has continued. The only reason we haven't  
179 done it in one hundred per cent of our stores is that there is a few of them not large enough.

Q. Now, Mr. Brewer, from your judgment as an experienced meat merchandiser what are the advantages of the self-service system of vending meat for the customer?

A. Well, I think the number one advantage is that we can bring this product to her at the least cost possible. In other words we—

Q. Well you explain why this enables you to bring meat into the hands of the consumer at a lower costs?

A. Well, number one, it increases your sales, therefore increases your tonnage, therefore increases the use of the equipment that is in the markets. It keeps them busy more often.

Q. And by "the equipment" you refer to these expensive cases and counters in which the goods are displayed?

A. That's right. That's only part of it.

We have these big coolers and these big machines and saws. You have an awful lot of equipment in one market that has to be kept going, otherwise the cost will go up.

180 By increasing the tonnage, increasing the purchase of meat by this method we were able to lower the cost to the customer.

Q. Have you had any experience as to the effect of self-service upon the sale of various cuts of meats?

A. Well, from personal experience, yes.

At the time we converted, let me put it to you this way: We had a lot of customers that were of the older type in age that did not particularly care for this new method, but we found out that after a few weeks they liked it and then it was also a great service to the young married wife who did not know round steak from sirloin steak if it were held up to her.

The packages are such, labeled as such, that she can read herself exactly what that piece of meat is. It tells her the weight, the price per pound and the description of what it is so she does not have to ask anybody. She doesn't feel stupid or ignorant. She just picks it up and goes home and says, "I have got a beautiful sirloin steak here," and she is right.

On the merchandising she took the word of the 181 butcher.

These are personal reactions that I personally have had in contact with different people.

Q. That you have had or that you have observed?

A. That I have actually talked to the gals.

182 Q. You have observed these reactions amongst your customers?

A. That's right.

Q. Have you observed what effect that has upon your ability to sell a whole carcass?

A. Well, it definitely has an advantage inasmuch as we can display the whole carcass in the case which she, at no time in my experience, has been able to see.

In doing this you display to her everything from the shanks to the tails, and she can make up her mind what she wants. She sees the loin, the ribs, the hind, the round, everything involved. It has to be displayed under self-service, or you don't sell it. She at no time has ever seen that displayed in that quantity, and in that variety.

Right now we have eighty feet of meat case, where most of the service cases were twenty, twenty-four and thirty-six foot before.

So it did help move the whole animal.

183 Q. She has a visual representation of some of the lesser known but highly edible cuts of meat that she would probably not call for, but seeing them there she very well may purchase them?



A. That's right.

Q. Now, what effect does that ability to dispose of the entire carcass have upon the ultimate selling cost, selling price of meat to the customer?

A. Well, it has a very definite effect. If all we sold were steaks and chops, we would close shop, because that is the cream of the animal. We have to sell what we call the mix, the whole animal, in order to come out.

We could not possibly just sell the steaks and stay in business.

Q. Save at exorbitant prices?

A. Yes, but you wouldn't sell it at exorbitant prices.

Q. Where does Jewel acquire the meat that it sells?

A. Well, we acquire it from Government inspected houses, Government graded beef. We do not have anything below choice.

184 It is acquired from all the major packers, basically outside of Chicago at the present time, because there are not very many left, and in some of the surrounding Chicago areas.

Every bit of meat that we buy is subject to inspection by our inspectors, and they have the privilege of accepting or rejecting every carcass that the buyer has bought, if it does not meet our standards.

We buy nothing but heifers of 600-pound weight. We think that is the best for the public in this area.

Q. So that although you order from a packer or a slaughterer or in any given community so many head of choice beef, and it has been approved by the Department of Agriculture inspectors as such, you still send your own inspectors in?

A. Yes, because—

185 Q. And inspect that and accept some and reject others?

A. It is accepted and rejected daily, based on our quality

standards. We have a certain weight standard which we want, and if it does not measure up to that we reject it, even though it had graded A under Government inspection.

189 Q. Are you familiar with the practices of a substantial number of your competitors, both chain and individual operators?

A. Yes, I am.

Q. Do substantial numbers of them fail to have an inspection system such as yours?

A. Yes.

Q. And in your judgment does that result in a lower quality of meat being offered by them to the public?

A. Well, from my personal knowledge they handle from one to two grades of beef. We do not. So they naturally would have a lower grade of beef than we do.

Q. And even if they had choice, it would not be double inspected as yours?

A. Well, each of us have our own standards. We have, we think, what are the highest standards in the meat industry.

Q. Please answer my question, Mr. Brewer:

Even if they bought the same Government beef it  
190 would not have this double inspection?

A. No.

Q. Which you think in your judgment is beneficial?

A. I do.

Q. Which is reflected in the figures of the popularity of your meat departments?

A. We believe so, yes.

Q. Now is it a fact that if you can keep those self-service counters working, as I term them as "salesmen" for you, that is would people be able to get meat out of them more hours per day than they are now working, that you can reduce the prorata equipment cost?

Mr. Dunau: If your Honor please, that's a leading question.

Mr. Christensen: I agree with you.

Mr. Dunau: I mean if we are getting critical in the case—

Mr. Christensen. I will agree.

By Mr. Christensen:

Q. What is the effect of night operations upon the spreading of your equipment cost as against a pound 191 or a ton of meat?

A. Well, naturally we would have a reduced cost factor involved, because of the use of the equipment during more hours.

Q. You, for several years, have headed up all buying or meats for Jewel?

A. That's right.

Q. Roughly in the last five years how many million dollars of meat does Jewel buy?

A. About five hundred million.

Q. Where does that meat come from?

A. Well, it comes from a number of different areas. We get an awful lot of it from Omaha, Minneapolis, Denver, some points in Illinois, Iowa. We buy it from all surrounding areas.

Q. With respect to Omaha, do your sales from Omaha amount to many millions—your purchases of Omaha 192 cattle amount to many millions of dollars each year?

A. That's right.

Q. And is it a fact that you purchase so much in Omaha that for many years you have been sending an inspector to to Omaha to inspect the meat before it is shipped from Omaha to Jewel in Chicago?

A. Yes, we send one every Tuesday night. Every week.

194

*Cross-Examination by Mr. Dunau.*

Q. Mr. Brewer, in what form does meat come into the Jewel Store, in the Meat Department.

A. Well, it comes basically in sides of beef, which is a half of an animal, or in the forequarter, or hind quarter of beef.

Q. And, of course, retail customers don't buy these sizes of meat?

A. No.

Q. Consequently, when the meat comes into the Meat Department of a retail store, it requires the work of butchers to prepare that meat for retail sale; is that correct?

A. That's right.

Q. Now, I believe you said, Mr. Brewer, that if the self-service Meat Department were to operate at night—and I take it you mean from 6:00 to 9:00 P.M., sir?

A. Or thereabouts, yes.

Q. (Continuing.) —That this would result in increased profits to Jewel because it could spread its cost of 195 operating over a greater number of hours; is that correct, sir?

A. That's right.

Q. Would you explain for me the basis for that judgment?

A. Well, basically we do not need personnel on hand from 6:00 to 9:00 to sell that stuff that was packaged, ready for sale, during the day. That can be sold out of self-service without an attendant.

Q. Would you have to have lights on the—

A. Lights are on, anyway. They are in the grocer's.

Q. Beg pardon?

A. The lights are on, anyway.

Q. And your notion would be that you could have this decreased cost because you would not have to have butchers on duty, sir?

A. Well, I say they are not needed.

Q. Would you have butchers on duty?

A. Not necessarily, no.

Q. When you tell me there will be a decreased cost to Jewel and therefore an increased profit, is that on the 196 basis of no butchers on duty?

A. No, that is in added volume.

Q. But in determining whether you will have a decreased cost, are you taking into account the wage consideration for operating between 6:00 and 9:00 P. M.?

A. Yes, because we have that experience now.

Q. Then your answer is that, taking into account the labor costs between 6:00 and 9:00, you would still come up with an increased profit because of the decreased cost, is that right?

A. Increased volume, yes.

Q. Now, how do you know you would have an increase of volume?

A. How do we know?

Q. Yes, sir.

A. Well, do you want it from a personal experience or from my observation?

Q. I want the basis for your judgment.

A. The basis for my judgment is Mrs. Customer wants to do her shopping while she is in the store in all departments. She has indicated that many, many times. She 197 can't understand why one department is closed and the others are open.

Q. What has that to do with the amount of meat she purchases?

A. She would buy the meat at that time. She would consume more meat.

Q. Why would she consume more meat?

A. Because it is available.

Q. Is it not available before 6:00 P.M.?



A. It is, but not to her. Maybe it isn't convenient for her to come in.

Q. You mean there are families in Chicago that are going without meat because they can only buy it from 6:00 to 9:00 P. M.?

A. Yes. They can't buy it after 6:00.

Q. Are you familiar with any studies that show that less meat is bought in the Chicago market than is bought in other cities?

A. Yes. Surveys indicated that.

Q. What surveys, sir?

A. Well, your per cent total of meat sales.

199 Q. Mr. Brewer, does the Chicago housewife buy less meat than the New York housewife?

A. I can't answer that. I don't know.

Q. Does she buy less meat than the San Francisco housewife?

200 A. I don't know.

Q. You do not know?

A. No.

Q. If she had three more hours during the day to buy meat, do you know whether she would buy any more meat in Chicago?

A. On the basis that it would be more convenient for her to shop at the time she is able to shop, yes.

Q. That statement, does it not, Mr. Brewer, presupposes that people buy less meat in Chicago because they have only 9:00 A. M. to 6:00 P. M. to buy it; is that correct?

A. I would say that is correct.

Q. You would say that.

Now, what information do you have which gives you the basis for a statement that the Chicago housewife buys less meat because she only has from 9:00 to 6:00 in which to buy it?

A. Well, maybe I could phrase it a little differently. Maybe the areas where we now are open would indicate that.

201 Q. What does that mean, sir?

A. That the sales in that area, meat and groceries total, are greater than they are in areas where we haven't got the combination.

Q. Have you made such a study?

A. I believe that is available.

Q. Have you made such a study, sir?

A. Personally, no.

Q. Do you know of any such study?

A. Yes.

Q. What such study do you know of?

A. The study that we have made.

Q. What is this study that you have made?

A. Well, counsel will have to brief me on that.

202 Q. Are you familiar with the study?

A. Yes.

203 Q. When was this study made?

A. Recently.

Q. When?

A. The exact date I don't know.

Q. By whom?

A. By our research group.

Q. Did you read the study?

A. I have seen it.

Q. Did you read the study?

A. I have looked it over.

Q. Did you read the study?

A. Well, how do you read figures?

Mr. Christensen: The question has been answered.

Mr. Dunau: Well, it seems to me to be susceptible to yes or no.

The Court: He said he looked it over. By that do you mean read it?

The Witness: Yes.

Mr. Christensen: I think counsel is trying to conduct a discovery rather than a cross-examination.

204 We will have the study here. Let him just examine this witness upon the basis of his direct testimony.

By Mr. Dunan:

Q. Mr. Brewer, you are an expert on the sale of meat, are you not?

A. Oh, I don't know that I am an expert. I know about it. I don't know what your definition of an expert is.

Q. You are a knowledgeable man about what goes in the sale of meat?

A. Right.

205 Q. Well, Mr. Brewer, do you have any personal knowledge upon which you base your statement that if market operation hours were increased from 6:00 P. M. to 9:00 P. M., the Chicago housewife would buy more meat?

A. Well, all I can say again is this: That I know if the product is available to her, she will buy more, yes.

Q. How do you know that, sir?

A. Well, it is inevitable that she will, because of her request that I get now that she can't buy it, it must be evident that she wants to buy it and cannot.

Q. Is it evident that she would want to buy it between 6:00 and 9:00 rather than before 6:00?

A. Yes, definitely.

Q. That is what is evident?

206 A. That is right, she wants to shop at her convenience, and not at mine.

Q. That is correct, she wants to shop at her convenience and not at yours?

A. Yes, because probably in the evening is when she wants to shop.

Q. Is that your basis for saying that if she had time to shop after 6:00 o'clock that she would buy more meat?

A. Definitely, because when you expose it to her, she always buys it.

Q. And then you are assuming, are you not, sir, that she is not buying as much meat as she wants because she has to buy it before 6:00 o'clock?

A. I would say yes.

Q. You are assuming that?

A. Yes.

Q. Mr. Brewer, if I walk into an A&P store, do I get a poorer quality steak than if I walk in and buy it at the Jewel store?

A. Well, I am not here to rap competitors.

207 Q. You may proceed.

A. You asked me whether you would get a better value in meat at Jewel than you would at A&P.

Q. No, I asked you if I walked into an A&P store to buy a steak if I would get a poorer quality steak than if I would walk into the Jewel store and buy a steak.

A. Well, yes and no.

Q. What does that mean?

A. They handle two grades of beef, and it would be depending on which kind you picked up.

Q. And if I picked up their higher grade of beef?

A. I would say it would be comparable to ours.

Q. Then I would get the same kind of steak?

208 A. Yes.

Q. If I went through a list of chain store operators in Chicago, Kroger, National Tea, Sure-Save, Del-Farm, and the rest, your answer would be the same, is that correct?

A. Very definitely, yes.

Q. Mr. Brewer, if I walk into a service market of Jewel Tea, will I pay more for a pound of meat than if I buy it at a self-service market at Jewel Tea?

A. No.

Q. The price would be the same at both the service and self-service market?

A. That is right, and do you want to know the 209 reason?

Q. No, I just asked you the question.

Is the same true with respect to other operators in the Chicago market operations who operate both service and self-service markets?

Mr. Christensen: If he knows.

Mr. Dunau: Yes, if he knows.

By the Witness:

A. Well, I don't know frankly. If they have—

Mr. Christensen: (Interposing.) All right, that is the end. You have answered.

*Redirect Examination by Mr. Christensen.*

210 Q. You have testified, Mr. Brewer, that Jewel sells the same cuts of meat at the same price per pound that both service and self-service markets do?

A. That is correct.

211 Q. Will you explain why that is?

A. Well, basically because we advertise in the metropolitan newspapers, which reach all homes in the Chicago area, and we cannot take fifteen stores out of that group and say that the prices are higher there, and for that reason we maintain the same price for all of our stores.



Q. Approximately how many markets do you operate?

A. We operate about 245 markets, out of which 15, I think, are self-service.

The Court: Where, in Chicago alone?

The Witness: Yes, sir, in the Chicago trading area.

The Court: Does that include the suburbs?

The Witness: Yes, it includes them, and that map shows about—

Mr. Christensen: And that map includes—and that includes everything on this map, a little north of it?

The Witness: It goes all the way up to Kenosha, and it goes all the way down to Benton Harbor.

By Mr. Christensen:

Q. And down to Benton Harbor?

212 A. And Benton Harbor and Chicago Heights, and all that area down in there, and Kankakee.

That is the operating area which we are in here.

Q. And there are some 250 markets all told?

A. 245 or 246, in round figures, yes, of which approximately 15 are service.

Therefore, we cannot adjust our advertising to fit the 15 little markets, so we maintain the same price at all markets even though our operating costs are higher in the 15 service markets.

Q. And 15 service markets by and large are small, old stores?

A. That is right, that is the only reason they are service.

213 (Witness excused.)

JAMES VICTOR BRODNICKI, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name?

214 A. My name is James Victor Brodnicki.

Q. And where do you live, Mr. Brodnicki?

A. 2614 North Lockwood, in Chicago.

Q. And what has been your education, sir?

A. I have attended the University of Illinois, from which I graduated, and then continued on in further studies and passed the CPA examination.

Q. When did you become a certified public accountant?

A. In May of 1955.

Q. By whom are you employed?

A. I believe that was in May of 1956.

I am employed by the Jewel Food Stores.

Q. In the various branches of the accounting department?

A. The various ones.

Q. What is your present position?

A. At the present time I am assistant to the man who heads up the accounting department actual of Jewel Food Stores, who is an office manager-comptroller type man.

Q. Were you asked to make a study of the effect of night operating hours upon Jewel stores, sir, with respect to their volume of business in meats and groceries and their profitability?

215 A. Yes, I was.

Q. Did you find that in the Jewel chain there were certain stores in which you had a record for a sufficiently long time to give you a satisfactory accounting base as to what

they had done before and after being permitted to sell meat at night?

A. Yes.

Q. Mr. Brodnicki, where were these particular 216 stores?

A. They were in a variety of communities.

Q. Do you have notes with you that will identify the stores?

A. Yes. Actually, there were two in Aurora, one in Geneva, one in Elgin, two in Joliet, one in Hammond, one in Whiting and one in Michigan City.

Q. Now, to determine the effect of night operations, how long a period do you figure was necessary to give you a fair base and a fair sample?

A. I felt you needed one year before a change, and a one year after the change, because of the seasonal variety of our business, which has peaks over the holidays.

Q. Well, would you just explain the seasonal variety so that the Court will understand what you mean by that?

A. We have a higher rate of business around 217 Thanksgiving, Christmas and New Years, and it tends to taper off in the beginning of the year, and it is also a little bit slower during the summer, and then it picks up during the cooler fall months, so that we do see a fluctuation in our business from season to season.

The Court: What about the Easter period?

The Witness: This would also be an extremely good week or several weeks.

The Court: Is that as good as Thanksgiving?

The Witness: I am not sure about the relationship—I would think that Easter is probably the better of the two.

By Mr. Christensen:

Q. Now, does Jewel, in the regular course of its business, keep statistics on the operation of each store as to its volume of meat sales, its volume of grocery sales, its meat department or market department payroll, its grocery store payroll—those are regular statistics kept by your company, are they?

A. Yes, they keep each of these statistics regularly.

218 Q. Are those available and do you have with you sheets taken from transcripts from the company's records of the company's experience in those regards chainwide?

A. Yes, sir, I do.

Q. Do you also have work sheets with you showing the performance of these nine stores on which you could find a one year period before and after night operations?

A. Yes, I have them personally.

Q. Are the performance of those particular stores the same, with respect to the same factors I have just inquired of you, sir, that you have as to the company generally?

A. Yes.

Q. Now, will you explain to Mr. Dunau how you made this study to determine how these nine stores performed as against the company?

A. I was able to find of which group of which of our stores were not able to sell meat at night, and then were granted the privilege by some union negotiation of one sort or another, and other stores, several stores, in which

we had a small meat operation where we expanded it;  
219 I was able to find statistics on before we had the privilege of selling meat at night, and compared those same statistics with those of the same year—I should say for the one year after they were granted the privilege, and was able to compare the two years.

Q. All right, now, will you produce the work sheets

showing the performance of these nine stores! Will you produce your tabulations of what those nine stores did?

A. Well, I have the effect on market sales, the effect on total sales, and the effect of stores earnings, and I can compare it for the one year before and after.

Mr. Christensen: I think we can save time if counsel wanted to look at these, because there are some of them that he may insist we put into evidence, and then others he may wish to waive. I will furnish them all to him to study over night, and they all go ultimately to qualifying this exhibit that counsel takes offense to before I have done a blessed thing about it.

220 The Court: I think that is a good suggestion.

Mr. Dunau: Yes, your Honor, I quite agree.

221 (Thereupon the trial of the above-entitled cause was adjourned to Thursday, October 25, 1962; at the hour of 10:00 o'clock a. m.)

223

*Direct Examination (Continued).*

Q. Mr. Brodnicki, are you the same Mr. Brodnicki who was on this stand when we adjourned last night?

A. Yes, sir.

Q. You are that same person, are you not?

A. Yes.

Q. Now, did you, after adjournment last night, discuss with counsel for the defendants your working papers by which you made a comparison of the performances of the stores that had either not been selling meat at night at all, or had increased their hours of sale of meat at night as against the change when no meat was sold at night?

A. Yes, I did discuss it with the defendants very briefly.

Q. Did you deliver to counsel a set of your basic working papers?

A. I believe somebody had done it.

Q. Will you explain to the Court why you were able to find only nine such stores that were statistically valid out of the entire Jewel chain?

A. Currently there are thirty-three stores which have the privilege of selling meat at night, and of this group I found that the majority did not have any changes in this opportunity to sell meat. In other words, once they opened their doors, they had the right to sell meat to begin with, so there was no change—so there was no before and after situation.

Also there were nine stores of the thirty-three in which we could trace the extent of the sales and other indicators as what change, in selling meat, that it takes to have on a store's operation, so of those nine stores there were enough stores in which there was a length of time necessary enough to measure the before and after situation.

226 Q. Now, you have testified that you found two stores in Aurora, one in Geneva, one in Elgin, two in Joliet, one in Hammond, one in Whiting, and one in Michigan City, is that not correct?

A. That is correct.

Q. Now, in your working papers, which one of those stores comes first?

A. In the period of time?

Q. Well, no, just in the heading?

A. No. 15, at Aurora.

Q. And as to 15, at Aurora, will you tell in detail what records you went to and what computations you made with respect to No. 15 at Aurora?



A. At this particular store, by contract agreement on January 1, 1958, we began to sell meat at night. We had not been selling meat at all, and I believe it went to a Thursday and Friday opening after that.

We maintain a stores operating record for each of our stores, and for Store 15 at Aurora, which is based on 227 a 4-week accounting period, and it contains such information as market sales, total sales, market payroll, total payroll, and the earnings of the store. This is a record—I would call it an original record. Well, in fact, it is the original record of the profit and loss statement of this particular store for each of the four weeks in which we have ever done business in this store, so I went back to one year before the start and pulled each of the thirteen accounting statements and developed this information.

Q. Did you then get a total figure for that store for the year 1957 as to the total market sales of the store?

A. Yes, I did.

Q. And the market payroll for the same period and the total payroll for the same period?

A. Yes, I did.

Q. And did you then compute the percentage of the market payroll to market sales for each of those thirteen accounting periods in that year?

A. Yes.

228 Q. And you computed the payroll to the total sales for each of the accounting periods?

A. Yes.

Q. Did you get, from your records, the earnings of the store for each period—the total earnings?

A. The total earnings, that was done, yes, and that is in the last column.

Q. And, now, did you follow the same procedure as to the succeeding year of 1958, sir, after the permission to sell meats after 6:00 P. M. had been given?

A. Yes, that was done also.

229 Q. Then you totaled up all of those items for that store?

A. That's right.

Q. Now, what comparison, and how did you arrive at a comparison of that performance of Store 15 in Aurora against the performance of the total chain?

A. I went through an identical computation which came off the company records of the total of all sales. All market of sales and all earnings which would include the figures for all of the stores. It is primarily a recap of each of the existing stores at that time, and I performed the same arithmetic calculations by each of their accounting periods.

Q. Now, in some of the nine stores did you use some period other than the total year 1957 and the total year 1958?

A. Yes. Of the nine stores there were actually four different dates in which these privileges were granted, and there would be four different dates involved. I could give you those.

Q. So that you took a year before the change and a year after the change?

A. That's right.

230 Q. And you compared it with a comparable period?

A. The year preceding and the year after.

Q. In the company's total experience?

A. Yes.

Q. Now, from that did you develop the figures . . . which are reflected on Plaintiff's Exhibit 13 for identification?

A. Yes, sir.

Q. That consolidates the averages of the nine stores in which you were able to make this study against the total chain performance for a comparable year?

A. That's right.

Q. Now, the nine stores in which the study could be made showed meat sales before evening permission was granted of how much?

A. \$9,667.00 per week per store.

231 Q. And in the year after night sales were permitted how did the meat sales run?

A. They were \$11,505.00.

Q. That was an increase of how much, percentagewise?

A. Oh, 19 per cent.

Q. At the same time what had the company's total increase in meat sales been?

A. 6.8 per cent.

Q. Now, on the nine stores what were the total sales of the stores of groceries, meat and produce?

A. \$31,381—

Q. Just a second. Before they could sell meat at night?

A. Before it was \$31,381.00.

Q. And afterwards it rose to?

A. \$36,618.00.

Q. And that was a percentage increase of?

A. 16.7 per cent.

Q. Whereas the company as a whole showed an increase of only 4.9 per cent, is that correct?

A. That's right.

Q. Was there a change in the percentage of meat  
232 sales to total sales in the nine stores—

A. Yes, sir.

Q. (Continuing.) —after permission for night sales was granted?

A. Yes, there was.

Q. And what did that amount to?

A. It showed that meat sales increased .6 of one per cent compared to total sales.

Q. And what has been the company performance in the same comparable period?

A. They went up .5 of one per cent.

Q. Now, on payroll what was the total store payroll average for the nine stores per week before night sales were permitted?

A. \$2,059.00.

Q. After night sales were permitted did that figure rise?

A. Yes, to \$2,461.00.

Q. So that the payroll went up 19.5 per cent?

A. That's right.

Q. And in the chain as a whole it went up only 7.9 per cent?

233 A. That's right.

Q. What was the effect upon store earnings?

A. They increased in the nine stores.

Q. From \$1,315.00 a week to \$1,618.00 per week, am I correct—

A. That's right.

Q. (Continuing.) —as I read your chart, which was an increase of 23.1 per cent?

A. That's right.

Q. Whereas the entire chain had increased only 7.7 per cent?

A. That's right.

Q. Mr. Brodnicki, in taking a total company performance did you exclude from total company performance any stores whatsoever?

A. No, that would be the full effect of all stores in the chain.

Q. Including the nine?

A. Yes, sir.

Q. So that to a degree these figures are weighted against our contentions. That is, these better performances 234 are also reflected in these figures, is that not correct?

A. That's right.

Mr. Christensen: I will offer Plaintiff's Exhibit 13 in evidence. If counsel wishes me to put in evidence anything any of the supporting data I will be happy to do so. It is very voluminous.

Mr. Dunau: If your Honor please, before we take a position on the admissibility of this exhibit, may I examine the witness here on this?

The Court: You may.

236

*Cross-Examination by Mr. Dunau.*

Q. Mr. Brodnicki, how old are you, sir?

A. 31.

Q. You took a degree at the University of Illinois?

A. Yes, sir.

Q. What was that degree?

A. Business administration.

Q. Did that give you a Bachelor's in business administration?

A. Bachelor's degree, that's right.

Q. After four years of study?

A. Correct.

Q. You also indicated you had further studies after you got your Bachelor's at the University of Illinois, is that correct, sir?

A. That's right.

Q. What additional courses did you have?

A. I took on some additional courses at the LaSalle University of Accounting.

Q. These courses were accounting courses?

237 A. It was a CPA review course, is the title of the course.

Q. And this further study was in preparation for passing an examination to be admitted as a Certified Public Accountant, sir?

A. That's right.

Q. In the course of your studies at the University of Illinois, did you take any course in statistics?

A. Yes, I did.

Q. How much study did you take in statistics, sir?

A. One course.

Q. Was that a half-year course, sir?

A. Yes.

Q. And how many hours?

A. It was a 3-hour course.

Q. Your total study of statistics, then, is—I take it this was an elementary course?

238 A. Yes.

Q. Then your total studies of statistics was three hours of an elementary course in statistics at the University of Illinois, is that correct, sir?

A. That's correct.

Q. Have you ever worked as a statistician, sir?

A. Yes, I have.

Q. In what way?

A. I had a job while I was working at the University of Illinois while I was attending school at the University of Illinois for a Dr. Osgood, who was writing some articles in—was a Professor of Psychology, and he hired me to be a statistician to help write some of these articles.

Q. What did you do as a statistician for this doctor?

A. It was accumulating data. I am trying to recall the exact techniques or words, the scientific names of it.

Well, I primarily accumulated and worked with a gentle



man who was obtaining information from electronics  
239 research, and I was compiling information for his  
articles.

I would like to add some statistical words to this. There  
were all kinds of averages and norms and means and  
those sorts of things.

Q. Where you provided with the basic data, sir?

A. Yes.

Q. And then what did you do with this basic data?

A. Accumulated it, interpreted it.

Q. What does it mean when you say you "accumulated"  
the data, sir?

A. Primarily add, multiply and divide, perform these  
arithmetic computations to come to the end product.

Q. When you were doing arithmetic, is that it?

A. Part of it was arithmetic.

Q. What other part was not, sir?

A. Well, when you use statistical tools like averages  
and norms and means, the end result is adding and sub-  
tracting these figures. But you have to know how to use  
these.

240 I cannot explain what part is arithmetic and what  
isn't.

Q. Your familiarity with the science comes from an  
elementary course for three hours for a half a year, is  
that correct, sir?

A. That's right.

Q. With respect to this study which has been offered  
in evidence, who asked you to make this study, sir?

A. It came to my superior, Mr. Larson.

241 Q. What did he tell you when he asked you to  
make this study?

A. He asked me if I could look through our company  
records to find any significance in the stores which have  
sold meat at night, to determine what the effect of selling  
meat in our stores is.

Q. Did he instruct you what to look for, sir?

A. To tell the truth, he really was rather vague, didn't know which stores were involved, and he said, "Jim, why don't you take the whole area and survey our records and see what is available, and I will give you whatever help is necessary to accumulate this information."

Q. From that point on, did you work on your own in preparing this study?

A. I would say about 90 per cent was on my own.

I asked a few other questions of people, various phases of it with our Division Managers and some of the other people who have a better knowledge of some of the information, to be sure I didn't have any misstatements of fact in my work.

242 Q. Well, then, this help you got from the others was to be sure that the figures that you have on these work sheets are correct?

A. In most part; yes, sir.

Q. In most part, yes, sir, did you say?

A. Yes, sir.

Q. Did you submit this study, after you had completed it, to a superior?

A. Could you repeat that?

Q. Did you submit this study, after you completed it, to a superior?

A. Yes.

Q. Who?

A. Mr. Larson, was my superior.

Q. Did he go over this study with you?

A. Briefly.

Q. Did he attempt to discuss with you the premises upon which this study was based?

A. He asked questions of the various phases of it, what I had covered and what I had done.

Q. Does this study represent your own end judgment, Mr. Brodnicki?

243

A. Yes, sir.

Q. Did you consult with an outside statistician to determine whether the premises upon which you made this study were valid?

A. No, I didn't.

Q. Is Mr. Larson a statistician?

A. An accountant.

Q. But not a statistician?

A. No, sir.

Q. When you made this study, were you told the purpose for which it was to be made?

A. Yes, sir.

Q. What were you told, sir?

A. I was told that Jewel wanted some information and, in fact, it would be used in connection with a Court case, and I was told that we wanted to know if there was any significance in selling meat at night.

Q. Were you told when you were asked to make this study, that it would be helpful to Jewel to show that it made a difference if there were meat operating differ-  
244 ences at night?

A. No.

Q. You were not told that?

A. No.

Q. You stated, Mr. Brodnicki, that with respect to the store at Aurora, 15-Aurora, which is Item A-1, that for the period of 1957 there were no night operations, and then, by agreement with the Union, Jewel was granted the privilege of operating nights in 1958.

Am I correctly stating what you said, sir?

A. I believe that is right.

Q. How do you know that there was an agreement in 1958, which granted market operating hours to Aurora?

A. I'm sorry, would you repeat that, sir?

Q. How do you know that there was an agreement in 1958, which granted market operating hours to Aurora?

A. I obtained this from the contract and also Mr. Vorbeck.

Q. What contract did you look at, sir?

A. I don't recall the exact number of the agreement.

Q. Do you know whether this was an agreement with Local Union No. 189, sir?

245 A. I believe it was.

Q. Do you know whether the Aurora store is in a group other than Group 1 in Local 189, sir?

A. No, I don't.

Q. You do not?

A. I do not know that.

Q. Do you know for what period of time there has been night operations permitted by agreement in groups other than Local 1?

A. Of this Local 181?

Q. Of Local 189, sir?

A. No, I don't know on that.

Q. When you say, therefore, that in 1957, night operation was not authorized in the Aurora store because of the agreement with Local 189, you are purely on the basis of hearsay information, sir?

A. If you call hearsay information getting it from a Division Manager, then I guess it is hearsay.

Q. Well, I think that constitutes hearsay.

Mr. Brodnicki, if you look at the first page of this study, PWPS appears at the top. Does that mean per week per store, sir?

246 A. That's right.

Q. In the next column it says "Per cent increase or decrease from base," the abbreviation DEC is in parenthesis.

Does that mean that at every other point in the study where a parenthesis occurs, it shows a decrease, rather than an increase?

A. I believe you are right, sir.

Q. Would you please turn to Item A-1, dealing with 515, Geneva and 368, Elgin?

Now, the figures under Sales, PWPS, per week per store, for market and total, those figures pertain, do they, sir, to each week, an average of the four weeks in the first quarter, for example, in 1957?

A. That is correct.

247 Q. When we go to the third and fourth columns, which says, "Payroll dollars market", and then "Payroll dollars total", is that per week, per store?

A. Well, the percentages—the percentage isn't necessarily per week per store. It could be either a weekly period or a yearly, and—

Q. (Interposing.)

No, I am not looking at the moment, Mr. Brodnicki, at the fifth column, which says, "Market payroll percentage, market sales", but at the moment I am confining myself to the third and fourth columns, which have the total in them.

Q. Now, with respect to those totals, is that per week per store?

A. No, that is the four week figure.

Q. So that in the first two columns we have a weekly figure, and then in the third and fourth columns, we have a monthly figure, is that it?

A. Well, a four weeks figure, that is correct.

Q. And in the next column, which has the percentage, we cannot ascertain that percentage, can we, from the figure in the first four columns, can we, sir?

248 A. Yes, sir.

Q. Will you please describe how that could be done?

A. If you were to divide the four week figure, into the one week figure, you can then equate your sales and payroll.

Q. In order to get per week, per store in columns three and four, we have to divide the figure by four, is that correct?

A. That is right.

Q. And then we would get the percentage which appears in column five?

A. That is correct.

249 Q. Now, in the seventh column, you have "Earnings per period", and where did you acquire the figure of "Earnings per period"?

A. From our company records.

Q. And what do those records consist of, sir?

A. Well, we maintain a stores operating record for each of our stores for a four-week period, and those figures come up with these period records.

Q. Then in determining the earnings for each of these periods from your company records, what items of cost go in?

A. Every item of cost.

Q. Will you describe them or list them, please.

A. Federal income tax, payroll, supplies, telephone and telegraph, transportation expense, administration charges, advertising, promotion expense, supplies and maintenance expense.

Q. If any of those items will come down in cost, you will show an increase in earnings, would you not?

A. That is correct.

Q. You would show an increase in earnings if they went down even if you have the same volume of 250 sales in either the market or the grocery department, is that not correct, sir?

A. Would you repeat that question?

Q. The earnings would be increased even though you had the same volume of sales, if the cost of the other items which you have listed, had gone down during that period?



A. That is right.

Q. Now, on this same sheet, under 515 Geneva, on the extreme lefthand side, you have a notation showing "before no nights, after six nights."

Is that an error when you say "after six nights"?

A. I don't believe so.

Q. Mr. Brodnicki, would you please look at page 2 of the last group of pages, with the store 515 Geneva, sir, at the top of the page?

A. Yes, sir.

Q. Now, would you look under the column which says "Store hours, grocery"?

A. Yes.

Q. Does that state "9:00 a.m. to 9:00 p.m., Monday through Friday"?

251 A. Yes, it does.

Q. It does?

A. Yes.

Mr. Christensen: What sheet are you looking at?

Mr. Dunau: This one here.

Mr. Christensen: All right.

By Mr. Dunau:

Q. Does that state "9:00 a.m. to 9:00 p.m., Monday through Friday"?

A. Yes.

Q. And "9:00 a.m. to 6:00 p.m. Saturday"?

A. That is correct.

Q. And the next column, does it state "Store hours, market, a. m. to p. m.", the same as grocery?

A. That is correct.

Q. Then you have in the "market," according to your page 2, market operating hours of 9:00 a. m. to 9:00 p. m., Monday through Friday, is that not correct?

A. That is correct.

Q. And that comes out to five days, does it not?

A. You are right.

252 Q. So that the notation of "six nights" under 515 Geneva, is in error, isn't that correct?

A. I believe you are right, and it should be five nights.

Q. That should be five nights, isn't that right?

A. Yes, sir.

Q. Now, under the same item, A-1, under the store 368 Elgin, appears the notation "six nights", in the margin beside the numerals in the first column of figures, and is that also an error?

. . . . .

By the Witness:

A. I believe you are right. There was only five nights this store was open.

By Mr. Dunau:

Q. That should be five nights, as well?

A. Yes.

Q. At the top of that page, on the extreme top on the lefthand side, you show two asterisks on the page numbered 253 titled A-1, 515 Geneva, 368 Elgin, and do you see that, sir?

A. Yes, sir.

Q. What do those two asterisks signify?

A. I believe it is used to facilitate copying these work sheets. It looks like the handwriting of my girl.

Q. Those asterisks have no significance in this study or to this study, is that correct?

A. No, sir.

Q. Now, would you turn to item A-2, in which you list the stores 341, Joliet, and 1161, Joliet?

A. Yes.

Q. Now, you will note that on the lefthand margin, deal-

ing with 341 at Joliet, sir, you have marked "six nights", and is that an error?

A. I believe that should be five nights.

Q. Would you check on your own notes to be sure?

A. Yes.

Q. All right, now, I see no notations in the margin to the left of the first column of numerals, dealing with 1161, Joliet, and does that mean that the hours which are listed on the left or to the left of 341, Joliet, apply also to 1161, Joliet?

254 A. They are included too.

Q. They do apply?

A. Yes, sir.

Q. Now, would you take a look at item A-1, 15, Aurora, and 950, Aurora.

A. Yes.

Q. The notation on the left margin showing "market operating hours" for 15 at Aurora—15, Aurora, has no counterpart for 950, Aurora, and does that mean that the same market hours prevail with respect to 950, at Aurora, as to 15, Aurora?

A. Yes.

Q. May I ask you, sir, the numerals 950 and 1161, and others which appear opposite the location of the store, are those company designations to identify the store?

A. That is correct.

Q. They have no other significance? In other words, it is not a street number?

A. It would be the street number also, yes.

Q. I see, you identify the store by the street number, is that correct?

A. That is correct, but the street name is left out.

255 Q. Now, will you please take a look at item A-3, dealing with 7240, Hammond, and 1755, Whiting.

A. Yes.

Q. Again, you have, on the lefthand margin, beside the numeral pertaining to 7240, Hammond, a list of market operating hours, but no comparable listing in the margin pertaining to 1755, Whiting.

Does the same hours pertain to 1755, Whiting, as to 7240, Hammond?

A. Yes, they do.

Q. Where did you obtain the information, Mr. Brodnicki, with respect to the hours of operation which prevailed at each of your nine stores before there was a change in the hours which prevailed after there was a change?

A. In general or specific cases?

Q. You just tell me the general way in which you acquired that information.

A. Well, for Michigan City I obtained this—this letter from the manager who had gone back through the records of this store, and he told me the dates on which those changes took place.

256 In this particular instance, the one you just asked me about, at Hammond and Whiting, at those stores, I had gotten a letter in correspondence from Mr. Morse, the vice president, authorizing the store to be opened.

This was an after effect because he said that these stores would expand their hours on this particular night.

Now, the other instance that I referred to, of these four stores I referred to, of the four stores I referred to a legal opinion from contracts.

Q. Which four stores did you look for a legal opinion for contracts?

A. Well, I didn't—I did not look at them myself. I obtained it from, as you say, hearsay from Mr. Vorbeck. Those were the first four stores in this study.

Q. Can you identify them by name, the first four stores in this study?

A. 15 Aurora, 950 Aurora, 515 Geneva, and 368 Elgin.

Q. And with respect to those four stores, you obtained your information from Mr. Vorbeck?

257 A. I might have a copy in my work sheets. I have a lot of contracts, and I can't say for sure—I know in the original records that I have, I do have the contracts, and I am not sure on this point whether I got it from him or actually looked it up myself.

Q. Well, how do you ascertain market operating hours from contracts where the contract permitted market operations in the evening at the employer's discretion?

A. I did not understand that.

Q. The agreement, in Local 189, other than Group 1, permits a determination of market operating hours to the employer's discretion, does that not?

A. I am sure I don't know or I don't understand your question.

Q. What do the agreements, with Local 189, in group other than 1, provide with respect to market operating hours?

Mr. Christensen: I am going to object to that. We will produce the contract.

The Court: The contract would be the best.

261 Q. Mr. Brodnicki, do you remember what the agreement with Local 189, outside of Group 1, provided with respect to market operating hours in Aurora?

A. I don't believe.

Q. You do not know, is that your answer, sir?

A. I couldn't state it specifically.

Q. You do not now know?

A. I couldn't quote the words.

Mr. Christensen: You have a copy, the Court one. It is all right with us if you want to show it.

The Court: Well, is this a duplicate of the other one?

Mr. Christensen: No, this is not a duplicate.

The Witness: I think I could clear up the whole situation

Mr. Dunau: This is what I can't represent. I don't know, your Honor. So there is hardly any point in giving the man a 1961 agreement unless I am also able to 262 represent it was the same at a previous period.

The Witness: To clear it up, we do publish a list of store hours periodically, approximately every year. And in 1957, we had one set of hours and in 1958, another set of hours, so there is no question about the fact the hours changed.

I have seen those reports, which I would be certain are correct. It is a question of the date in which that change occurred, and so I was trying to pick up the date very accurately, on these work papers, but I do know a change took place from those records.

By Mr. Dunau:

Q. Well, of course, assuming when you ascertained when a change took place at a particular date that the change was attributable to a change in the agreement.

A. I was really interested in the change of hours. That was my purpose.

Q. Please answer the question. Did you assume 263 that when you ascertained that a change took place that the change was a consequence of a change in the collective bargaining agreement?

A. I had felt there was some change in the contract.

Q. This is your feeling with respect to the matter?

A. Yes.

264 Q. Mr. Brodnicki, with respect to 15 Aurora, the change that took place, according to your record, Item A-1, on January 1, 1958, is that correct, sir?

A. Yes.



Q. Do you know whether a change in agreement took place on January 1, 1958?

A. I couldn't say for sure.

266 Q. Mr. Brodnicki, you stated, not to belabor this point too much, that you got some of your information from Mr. Morse, is that correct, sir?

A. A documentary letter he had written.

Q. He had written a letter setting forth market operating changes, sir?

A. The letter stated that on a specific date—that was about a week after he had written this—that these hours had changed, and he asked some questions about the effect of these changes. There is a memo dated back in 1957, I believe.

Q. And to whom was this letter addressed?

A. I believe to Mr. Ohm, our treasurer, or Mr. Larson.

Q. Mr. Morse was asking for information as to 267 hours changes in this letter, sir?

A. No, he stated there had been a change of hours.

Q. Where did he acquire his information?

A. He is vice-president in charge of stores. I presume he had a pretty good knowledge of the subject.

268 Q. If he was vice president I assume he had his information from what somebody told him?

A. Well, he was out there and saw the change:

Q. Or that.

Would you turn, Mr. Brodnicki, to Item A. Recap. would you please tell me whether, taking 15 Aurora on the first line, that the information along the first line pertaining to 15 Aurora is the same information which appears on the last line of Item A-1, under 1957, pertaining to Aurora, 15 Aurora?

A. Yes, sir.

Q. It is, sir.

A. Yes, sir.

Q. And that is true with respect to the remainder of the nine stores listed on Item A-1, is that correct?

A. Yes.

Q. Now, let's take a look, Mr. Brodnicki, at Item B-1, which is entitled "Company Recap, Jewel Food Stores."

Do you have it, sir?

269 A. Yes, I do.

Q. Now, as I look at Item B-1, you have a listing for 1954 to 1955, and then below that a listing for 1955 to 1956.

Does this pertain to the same hour changes which you have listed under Item A-2 for 341 Joliet, and 1161 Joliet?

A. It appears to be, yes, sir.

Q. It is, sir?

A. Yes, sir.

Q. When you have "Company recap, Jewel Food Stores," are you including all stores operated by Jewel Tea Company as of this period?

A. Yes, sir.

Q. Do you know when the Eisner, E-i-s-n-e-r, chain of stores was acquired by Jewel Tea Company?

A. I believe about four years ago.

Q. That would make it 1958, is that correct, sir?

A. Yes, sir.

Q. Now, taking a look at Item B-2 and B-3, which covers 1958, do those figures include the Eisner chains op-  
270 erated by Jewel Tea?

A. No, sir.

Q. They do not?

A. No, sir.

Q. Then excluded from these figures are the Eisner chain?

A. That is correct.

Q. All other stores are included, is that correct?

A. That is correct.

Q. Now, would you please look at Item B-1, and on the last column it says "Store Weeks," and then there are numbers under that.

Would you tell me what those are?

A. Store weeks are the term which would tell you how many Jewel stores were open in a given week, times the number of weeks. I could best describe it by an example:

If we had one hundred stores that were open for a four week period, this would be four hundred store weeks.

Q. I see. So that if I divided 669 by 4, I would come up with what?

271 A. Approximately 150—about 153 stores.

Q. That would mean there were 153 stores covered as of the 11th period of 1954, is that correct?

A. Actually, my division is wrong. It is a few more.

Q. Apart from the accuracy of your arithmetic—

A. That's right.

Q. (Continuing.) —dividing store weeks by four, gives you the number of stores covered by the compilation?

A. That is correct.

Mr. Christensen: May I ask: If the store is opened in the middle of the period, and is reflected only for two weeks, it will show up in this total, but you can't divide the total by four in all cases, can you?

Your accounting period stands on entire months, and you open a store in the middle of the month.

The Witness: It would be in there for those weeks you have it open.

272 Mr. Christensen: Four weeks is not always divisible by four.

By Mr. Dunan:

Q. You might in that case, I take it, get 150½ stores?

A. That is correct.

Mr. Christensen: Whatever it may be, depending on opening and closing of stores.

Mr. Dunau: All right.

By Mr. Dunau:

Q. Now, Item B-1, then, as I understand it, pertains to the total company experience during the same period of time as your Item A-2, pertaining to 341 Joliet and 1161 Joliet pertains?

A. That's right.

Q. Your Item B-2 pertains to the same period for all Jewel stores that are covered by 15 Aurora, 950 Aurora, 515 Geneva, and 368 Elgin, is that correct, sir?

A. Yes, sir.

Q. And your Item B-3, which is a compilation of all stores, corresponds to the same period covered by 7240 Hammond and 1755 Whiting, is that correct?

273. A. That is correct.

Q. And your Item B-4—I am sorry—no, that's right—your Item B-4 pertains to the same period of time as is covered by Item A-4 or all company stores—I am sorry, let me repeat that.

Your Item B-4 pertains to all company stores corresponding to the same period covered by 2601 at Michigan City on A-4, is that correct?

A. That is correct.

Q. Now, looking at Item B recap, sir:

Confining ourselves for a moment to 341 Store, years 1954 to 1955, on the first line, does your item on the first line pertaining to 341, 1954-1955, correspond with your summary item under B-1 for the same period of time?

A. Yes, sir.

Q. And the same would be true with respect to the rest—

A. That's right.

Q. (Continuing.) of the stores listed on the Item B recap, is that correct?

A. Yes, sir.

274 Q. Now, your last two sheets identify for you thirty-three stores in which night operation appears—exists, I should say.

A. Yes, sir.

Q. And of those thirty-three stores you selected the nine?

A. That's right.

Q. All right, Mr. Brodnicki, let's go forward.

In comparing a year before a change was made with a year after a change was made, did you take into consideration whether there was an increase in the cost of meat in the second year?

A. No, sir.

Q. Did you take into consideration whether there was an increase in the cost of grocery products in the second year?

A. No, sir.

Q. In determining the labor costs for the second year did you take into consideration whether there had been an increase in the wage in the second year?

A. No, sir.

Q. In computing the cost, labor cost, for the second 275 year, did you take into consideration premium paid to butchers for working at night?

A. Insofar as those figures are reflected in the total payrolls for the stores, yes.

Q. But you did not segregate the premium pay from the regular straight time pay?

A. No, sir.

Q. Now, in comparing the before and after, did you take into account whether the second year after the change had been made there had been a growth in population in the community in which that store operated?

A. No, sir.

Q. Did you take into consideration whether the character of the neighborhood had changed in the second year?

A. No.

Q. What is your answer, sir?

A. No.

Q. Did you take into consideration whether in that neighborhood Jewel had closed one of its own stores?

A. I don't believe any had closed, but I—

276 Q. Yes; did you take that into consideration? Did you inquire as to whether any of the stores had closed?

A. Yes.

Q. You did inquire?

A. Yes.

Q. And what did you find out?

A. There were no store closings in these communities.

Q. During the second year of the change?

A. During any of the period before and after.

Mr. Christensen: May I ask: Is that answer restricted to the nine?

The Witness: Yes, sir.

By Mr. Dunau:

Q. Where did you get this information from, sir?

A. Well, we have records—I got it from my own information of records of stores which are open and my awareness of stores in these communities. I know from my own knowledge of these stores.

Q. Oh, you have personal knowledge with respect to these nine stores, sir, and the neighborhoods in which  
277 these nine stores operate?

A. I have driven through most of these communities. I am aware of sales figures that come in from the stores.

Q. And your information is gained from driving through the communities?



A. Talking to merchants?

Q. Talking to Merchants?

A. Yes.

Q. All right, sir. Did you determine whether in the second year of comparison a particular one of the nine stores had been physically enlarged?

A. No, sir.

278 Q. Did you inquire as to whether any of these stores in the second year of the comparison had been converted from a self-service market—from a service market to a self-service market?

A. Yes, sir.

Q. You made such an inquiry?

A. Yes, sir.

Q. Do you find whether any such store had been converted?

A. Not during this time period.

Q. Did you say that during this time period no store for the second year of operation had been converted from a service to a self-service market; is that your answer?

A. Yes.

Q. Now, Mr. Brodnicki, please look at Recap A, which pertains to the nine stores which you are using as the basis for a comparative study.

Do you have that before you, sir?

A. Yes, I do.

Q. Now, would you look at the fourth column?

279 Does that show that there was a 23.2 per cent increase in the labor costs for the nine stores?

A. Before or after?

Q. That there had been a 23.2 per cent increase in costs in the second year, as compared with the first year?

A. That's correct.

Q. Did you inquire as to what accounted for that increase in the labor cost?

A. No, sir.

Q. Is part of the increase attributable to paying butchers for working at night?

A. I am sure it is.

Q. Now your Item B Recap, sir, on the top line pertaining to 1954 to 1955, all stores, you show an average earnings—and this is for a week period, is it, Mr. Brodnicki?

A. This is for a 4-week period.

Q. A 4-week period.

(Continuing.) —of \$3,383, is that correct?

A. That is correct.

280 Q. And then on the last line, for 1961, to 1962, you show that all stores, for all stores, that the average earnings had increased to \$5,436, is that correct, sir?

A. This is \$5,588.

Q. No, that is—you are looking at 1960 to 1961. Will you please look down here (indicating)? That is the latest figure you have, is it not?

A. You are correct.

Mr. Christensen: Which figure are you talking about?

Mr. Dunau: The first figure, \$3,383, is on the first line, on Item B Recap.

The last figure appears on the last line prior to the company average of—

Mr. Christensen: You are quite mistaken; that is Store No. 2601. That's not the last line.

Your last line is—this is the store, here. It is—

281 Q. Mr. Brodnicki, does Item B Recap pertain to all stores of the Jewel Tea Company?

A. Yes, sir.

Q. Does the last item which I have read, 1961-62, \$5,436, pertain to all stores of the Jewel Tea Company?

A. The \$5,436 for that time period does include all stores.

Q. All stores?

282 A. Yes.

Q. And the first figure I have mentioned to you, \$3,383, pertains to all stores, does it not, sir?

A. Yes, sir.

Q. Can you account for an increase in the earnings from 1954 to 1962 for all stores?

What happened to increase the earnings for all stores?

A. Well, sir, that is a very complex answer dealing with our expenses and our gross margins and our sales. It would take quite a lengthy answer to explain that.

286 Q. Now, Mr. Brodnicki, let us look at Item B recap, and Item A recap.

Do you have those?

A. Yes, I do.

Q. I don't know, I don't want to disarrange your file, but it might be better to pull it out so you can look at both at the same time.

A. Good idea.

Q. Now take a look at Item B recap, sir. The second group is the after group. Do you see that?

A. On the B?

Q. On the B, yes.

A. This one?

Q. That's right. Do you see that?

A. Yes.

Q. Now, would you look at the 7 and 8 lines of that after group. It says:

"1956 to 1957"?

A. Yes.

Q. Is that an error?

A. No, sir.

287 It is not an error?

A. No, sir.

Q. Would you please—well, before we go to that, on the “before” you have under the 7 and 8 lines the same period, 1956 to 1957?

A. Yes, sir.

Q. Well, you couldn't very well be comparing the same period if you have a before and after, could you?

A. I don't understand.

Q. Shouldn't that be 1957 to 1958, in the second group, after?

A. Yes, line 7 and line 8 should show the year previous above in the chart.

Q. So that the line 7 and 8 in the after group should appear as 1957 to 1958, rather than 1956 to 1957, is that correct?

A. The years in the top portion should be corresponding to Exhibit B-3, which should be 1956 and '57, which is right.

In the year later, in the line 7 and 8 below it should be years 1957 and '58.

Q. So that we should change for lines 7 and 8 in 288 the after group, we should change from 1956-57 to 1957-58, is that correct?

A. Yes. The figures are right, but the caption should be changed.

Q. The figures are right but the years that you assigned are wrong?

A. That's right.

Q. Now an Item B recap, this pertains, looking at the after figures from 1955 to 1956, shows an average performance for all stores of \$4,776.00, average earnings?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Now look at Item A recap for the 15-Aurora store for the same era.

That shows average earnings of \$5,024.00, is that correct?

A. The which Aurora store, sir?

Q. 15-Aurora.

Look at your Item A recap.

289 Mr. Christensen: That is not the same time period.

By the Witness:

A. Yes, sir.

By Mr. Dunau:

Q. That shows \$5,024.00 for the 15-Aurora store, is that correct?

A. \$5,057.00, unless I am looking at the wrong figure. \$5,157.00.

Q. Look at the recap, sir. Item A recap?

A. Yes, sir.

Q. 15-Aurora, \$5,024.00, is that right?

A. Yes, sir.

Q. All right. Now that is the same period of time that the average performance for all stores was \$4,776.00, is that correct?

A. That's right.

Q. All right. Now can you account for the difference between the approximately \$275.00 greater earnings in the 15-Aurora store, from the average, in detail? Just account for it, sir. Can you?

A. It is a complex figure made up of salaries and other expenses.

290 Q. Why was the 15-Aurora store earnings more on the average than all other Jewel stores during the same period?

Mr. Christensen: Now the figures don't show that. The figures don't show that at all.

Mr. Dunau: The witness has just testified that for the same period of time—

Mr. Christensen: He has testified nothing of the kind.

He has testified what Aurora earned and what the total Jewel average was. He did not say Aurora made more than all other Jewel stores, which is what your question says.

Mr. Dunau: The question was did it earn more than the average.

Mr. Christensen: You misspoke yourself.

Mr. Dunau: If I omitted the word "average" I misspoke.

The Court: All right, proceed.

By the Witness:

A. Yes, it did.

291 By Mr. Dunau:

Q. It did?

A. Yes.

Q. All right. Now, can you account for us the reason why the 15-Aurora store earned more than the average of all other stores?

A. Again it is a complex answer affecting gross margins, and expenses. It would have to be an analysis of just that one question. I presume it could be done.

Q. It is not as a result of night marketing hours, is that correct?

A. I don't understand what your question is—

Q. Is the reason that the 15-Aurora store earned more than the average of the Jewel stores the fact that for the second period they were operating at night?

Mr. Christensen: The sole reason, is that your question?

By Mr. Dunau:

Q. Is a reason?

A. I believe this is a factor, yes.

292 Q. You believe that a factor in showing that the 15-Aurora store earned more than the Jewel average



is that you had night authorizations in the 15-Aurora store, is that your answer?

A. Yes.

Q. Let's go to the 450-Aurora store.

A. 950.

Q. 950-Aurora, I am sorry.

Does the total Jewel performance, the average for each store, show \$4,776.00 in Item B recap?

A. Yes, sir.

Q. Does it show for 950-Aurora, that it is \$4,750.00?

A. Yes, sir.

Q. I make that out to be \$26.00 less than the average performance of all Jewel stores?

A. You are correct.

Q. Why didn't night operation in the 950-Aurora store bring in above the average for all Jewel stores?

A. Again this is just one factor, operating, and I think there are other factors that affect the profitability of the store.

Q. So the fact that it is less profitable than the 293 others is not true, or is it due to night marketing operations?

A. Well possibly the store could even have been less profitable if a night operation was in this.

Q. So that if you had no night operation you are telling me that the store would have been even worse off, is that it?

A. These figures tend to indicate that.

Q. I see. Now let's go to 515-Geneva.

That shows that the average earnings on that store were \$12,964.00, against an average performance of \$5,550.00 for all Jewel stores, is that correct?

A. That is correct, sir.

294 Q. That means in the 515 Geneva store, there was about a \$7,200 more average earnings than in all the

other Jewel stores, is that correct, or almost more than one hundred per cent more, is that correct?

A. I believe your arithmetic is right. I do not have the—

Q. (Interposing.) Your answer is yes?

A. Could you quote me the figures again, please, sir?

Q. Sure, the average performance of all Jewel stores is \$5,515?

A. That is correct.

Q. The average performance for the 515 Geneva store is \$12,964?

A. Yes.

Q. Geneva does about seven thousand dollars plus more business than the average Jewel store, and what accounts for that?

A. I do not mean to be vague, but again it is a complicated answer that affects a lot of factors.

Q. Does night operations account for \$7,000 more?

A. I would not think so.

295 Q. You would not think so?

A. No, sir.

Q. Now, take the Elgin store, 368, it shows an average earnings of \$4,701, is that not correct?

A. That is correct.

Q. As against a performance for all Jewel stores, during the same period, of \$5,515?

A. That is correct.

Q. Substantially less than the Elgin store—substantially less in the Elgin store than the Jewel average, is that correct?

A. That is correct.

Q. How do you account for that?

A. The same answer that I had given you, sir.

Q. It would have been even worse without the night operations, is that what you are telling me?

A. I would say yes.

Q. Are there other factors which would be contributing to the fact that the 368 Elgin store is a less profitable store than the Jewel average?

A. Yes.

Q. There would be other factors?

A. Yes.

296 Q. Would you name those factors for me, please?

A. I would presume the locale and the size of the store, the manager who is out there, and possibly just the efficiency of the store in general.

The Court: Would population enter into it?

The Witness: I would say yes. Yes, it would.

The Court: And also the number of residents in the community?

The Witness: I would say in this particular one, yes.

By Mr. Dunau:

Q. Take a look, sir, at your 341 Joliet store. That has an average earnings of \$4,013 as against an all Jewel performance for the same period of \$5,515, and that is even worse than the 368 Elgin store, is it not, sir?

A. That is correct.

Q. Your answer as to the 368 Elgin store would apply then also, I take it, to the—

A. (Interposing.) To the No. 341.

Q. To the 341 Joliet store?

297 A. Yes.

Q. Now, take your 1161 Joliet store, sir, \$8,951 is the average earnings for that store, is that correct?

A. That is right.

298 Q. That is in the same city as the other store in Joliet which has \$4,013 average annual earnings, is that correct?

A. That is right.

Q. Now, the \$8,951 is substantially in excess of the Jewel average of \$5,515, is that right, sir?

A. That is correct.

Q. Is that substantial excess due to night operations?

A. I say—I would say that is only a portion, but it is a factor.

Q. A relatively small portion?

A. By about 15 per cent.

Q. How do you arrive at the 15 per cent figure, sir?

A. I would say it is a basis for the study of determining the before and after situation over an extended period of time because these underlying factors seem to be true in each of these situations, even though there is about a seven year time period covered; there are newer stores and there are older stores, and there are larger and smaller stores and all seem to be the same underlying factors 299 in almost all of each of these situations.

Q. I see; and would you show me where, in any of these studies here, you have a 15 per cent figure?

A. Well, that is one of the phenomena of averages. Very often you do not have a particular figure, which is actually 15 per cent, because they can hover above and below that.

Q. Where in this study do you get the 15 per cent figure?

A. It is actually the comparison of the company's performance with the study of these nine stores.

Mr. Christensen: Mr. Witness, would you point out the differential on the chart for counsel, and let's settle that right now.

By the Witness:

A. During a comparable period, the company went up 7.7 per cent, and these nine stores went up 23.1 per cent, and I believe the difference is 15.4 per cent.

By Mr. Duran:

Q. You are using the study itself to arrive at your 15 per cent?

300 A. That is right.

Q. At 7240 Hammond, you had an average annual earnings of \$3,884, is that correct?

A. Yes, sir.

Q. During the same period the company's performance was \$5,515, is that correct?

A. I don't see that—

Q. (Interposing.) No, I am sorry. You are absolutely correct and I am wrong.

Was the average Jewel performance for that period \$5,324?

A. That is correct.

Q. That is a little less than the \$1,500 less for the Hammond store than for the Jewel average?

A. That is correct.

Q. How do you account for it? Do you account for it in the same way you have indicated with respect to the other stores?

A. Yes, sir.

Q. All right, your 1755 Whiting store shows a \$3,142 average annual earnings as against a Jewel performance for the same period of \$5,324?

A. That is correct.

301 Q. Do you account for that difference in the same way as you have accounted for the other differences?

A. Yes.

Q. Now, take the last store, Michigan City, the average annual earnings for Michigan City is \$10,814 as against Jewel's performance for the same period of \$5,436, almost twice as much?

A. Yes.



Q. Do you account for that by night operations at the Michigan City store?

A. A proportion of the increase, yes.

Q. A proportion?

A. Yes.

Q. How did you determine the proportion?

A. From the study of what effect these night sales had on our operations.

Q. You are using the study to justify the difference?

A. I don't believe that that is exactly what you asked me.

302 Q. Let's go on to another subject, Mr. Brodnicki, and this time I would like you to take the sheets for each individual store, and the first one I have in front of me is 515 Geneva.

This shows, as I read it, that you had an 8.8 per cent increase in the sale of meat after you went to night operations, is that correct?

A. Yes, sir.

Q. And the increase in the hours was 15 hours, 6:00 p.m. to 9:00 p.m., Monday through Friday, is that correct?

A. Yes, sir.

Q. So for those 15 hours, are you telling me that there was an 8.8 per cent increase in the sale of meat?

303 A. I would say that contributed to the increase.

Q. It does not account for the increase, though?

A. It might not match it dollar for dollar.

Q. What do you mean "it might not match it dollar for dollar"?

A. Well, even in the company's performance we have various factors which affect our performance as in a given store, and I do not think you can isolate any one factor and say that it is precisely—we have to make a judgment, and this is a judgment based on statistics.



Q. I see. Now, Mr. Brodnicki, take a look at the 368 Elgin store. Did the same change in hours occur in the 368 Elgin store as had occurred for the 515 Geneva store?

A. Yes, sir.

Q. Does your first column show that there was a .5 per cent increase in meat sales after there was an expansion of the night market?

A. Yes, sir.

Q. And are you now telling me that the .5 per cent was due to night marketing?

A. I would say it would have been a decrease if it 304 were not for the operation.

Mr. Christensen: May I go back: Did I understand you to say that the same increase in night operations occurred?

Mr. Dunau: In these two stores, yes, sir.

By the Witness:

A. The same number of hours.

Mr. Christensen: All right.

By Mr. Dunau:

Q. How do you account for the fact that while you had this same increase in hours at the 368 Elgin store, as in the 515 Geneva store, that you showed an increase of 8.8 per cent in the Geneva store as against only a .5 per cent in the Elgin store?

A. I could not say specifically, but when a number of stores make up a group, you are not going to have all of your figures hovering right on an average. You will have some highs and some lows, and as you are indicating, these are the stores—some of the stores on the low end.

305 Q. Mr. Brodnicki, under the 368 Elgin store, during the same period that you had a .5 per cent increase in the volume of the sale of meat, you had a 2.5 per cent de-

crease in the sale of grocery products, or of all products, rather, is that not correct?

A. Yes, sir.

Q. So notwithstanding the fact that you increased in market operating hours, in that store you were losing business?

A. Yes, sir.

Q. Now, it also shows, under the Elgin store, that your payroll costs, both in the market and for all employees, increased in the second period over the first period, is that right?

A. Yes, sir.

Q. And your volume of sales decreased during that period, is that correct?

306 A. That is right.

Q. And your last figure shows that there was nevertheless an increase of 24.5 per cent in the earnings in that store?

A. Yes, sir.

Q. How do you account for an increase of 24.5 per cent in the earnings of a store when volume goes down and labor costs go up?

A. I was amazed with the same thing, and I spent several hours explaining this to myself, and it was a combination of meat operation gross margins and our grocery operations.

I might mention that our stock losses decreased here, too, and it was a combination of several things which affected it.

I did analyze this thing, and I went through and determined in my own mind that the figures were correct. I could not comprehend this at first, but it did tie in with our company records.

Q. Nevertheless, Mr. Brodnicki, you continued to use that 24.5 per cent increase as an increase attributable to an expansion in night markets, did you not?

307 A. Yes, sir.

Q. Even though your study shows that it had nothing to do with night marketing?

Mr. Christensen: I beg your pardon. He did not so testify.

The Court: Did you say that?

The Witness: No, sir.

By Mr. Dunau:

Q. All right, what did you say?

A. I said that I had found other things which contributed to this difference in profitability which accounted for, in this case, the larger share of the change.

Q. You used the 24.5 per cent increase in your study and attributed it entirely to the expansion of market operating hours, did you not, sir?

A. Yes, sir.

Q. And you did that notwithstanding the fact that you had only a .5 per cent increase in the volume of meat sold during the second year?

A. That is correct.

Q. And you made no inquiry, did you, as to whether the prices of meat had increased for the second year?

308 A. That is right.

Q. All right. Now, let's go to the 15 Aurora store, sir.

A. All right.

Q. Is it correct to state that in the 15 Aurora store, sir, the hours were expanded by six, from 6:00 to 9:00 p. m. on Thursday and Friday?

A. Yes, sir.

Q. That is correct?

A. Yes, sir.

Q. Notwithstanding that expansion, does your study show that you had a .3 per cent decrease in the volume of meat sold during that period?

A. Yes, sir.

Q. The same expansion of hours took place with respect to the 950 Aurora store, did it not?

A. Yes, sir.

Q. And in that store, sir, you had a 1.2 per cent decrease in the amount of meat sold notwithstanding the expansion of market operating hours?

309 A. That is right.

Q. Now, take a look at your 341 Joliet store, sir.

A. Yes.

Q. Do you have it, sir?

A. Yes, sir.

Q. Before the change, did that store sell meat at night from 6:00 p. m. to 9:00 p. m. on Friday?

A. Yes, sir.

Q. Did it then go to 6:00 p. m. to 9:00 p. m. Monday through Thursday, as well as Friday?

A. Yes.

Q. You had an increase of market hours of 12 hours, 6:00 p. m. to 9:00 p. m. Monday through Thursday, is that it?

A. Yes, sir.

Q. And you show an increase in the sale of meat of 45.9 per cent during that same period, is that correct?

A. Yes, sir.

Q. Did you increase your sale of meat by 45.9 per cent by opening your store 12 more hours from 6:00 p. m. to 9:00 p. m.?

310 A. I believe only a portion of that.

Q. Only a portion of that would be attributable to that, is that correct?

A. Yes, sir.

Q. Now, take a look at the 1161 Joliet store, and the same increase took place there, is that right?

A. Yes, sir.

Q. In market hours?

A. Yes, sir.

Q. And there you show an increase in the volume of meat of 18.7 per cent, right?

A. That is right.

Q. Both stores operate in the same city, do they not?

A. Yes, sir.

Q. Would marketing hours have the same influence on both stores in the same city?

A. They might.

Q. How do you account for the fact that in one store you have increased the sale of your meat by 45.9 per cent, and then in the other store by 18.7 per cent?

311 A. There are other factors, either this could have a different effect on customers in different stores, or there are other underlying factors.

Mr. Christensen: You mean different areas in the same towns have different shopping habits or their shopping habits could vary?

The Witness: Yes, that could be a determining factor.

By Mr. Dunau:

Q. Now, go to 7240 Hammond and 1755 Whiting.

A. Yes, sir.

Q. As I read this, before the change you operated the meat markets from 9:00 a.m. to 9:00 p.m., Monday through Saturday, is that correct?

A. Yes, sir.

Q. That was before the change?

A. Yes, sir.

Q. And the change was to increase the hours from 9:00 p.m. to 11:00 p.m. on Monday through Friday, is that right?

A. Yes, sir.

Q. So you had a 10 hour increase in marketing  
312 hours for the period from 9:00 p.m. to 11:00 p.m., is that right.

A. Yes.

Q. You show an increase in the volume of meat sold of 30.3 per cent, is that correct, for the 7240 Hammond store?

A. Yes, sir.

Q. Do you attribute an increase of 30 per cent to shopping between the hours of 9:00 p.m. and 11:00 p.m.?

A. I would say that was an important factor, yes, sir.

Q. Many people go out and buy meat between 9:00 p. m. and 11:00 p.m., is that correct? Is that what you are telling me?

Mr. Christensen: That is what the figures show.

By Mr. Dunau:

Q. Would you answer my question, sir? Many people buy meat between 9:00 p. m. and 11:00 p. m., is that correct, sir?

A. I don't know what you mean by many, sir, in relation to something else.

313 Q. Do you have a brisk trade between 9:00 p. m. and 11:00 p. m. in the sale of meats?

A. I would not say that it is brisk, no, sir.

Q. Would you say that it is very light?

A. No, sir.

Q. How would you describe it?

A. Moderate.

Q. How do you know that?

A. Oh, from the figures I have seen that tend to indicate the impact.

Q. All you are inferring from is your own study, is that it?

A. Most of my judgment is based on the figures of store sales, yes.

Q. Most of your judgment is based on looking at those figures, is that it?

A. I have talked to the men that work in these markets.



Q. I beg your pardon?

A. I have talked to the men that work in these markets, and they do say that there are or is a moderate amount of traffic through the store, so it seems to substantiate the figures.

314 Q. Did you talk to the people at the 7240 Hammond store?

A. I don't know which stores they were from. I know there were two Indiana stores, and we only have about—

Q. (Interposing.) When did you talk to them?

A. Last night.

Q. I see, and this study was made before last night, wasn't it?

A. The figures—the sales figures, yes.

Q. When was the study made?

A. It was made, oh, at least in the last two to six weeks.

Q. It was made in the last two to six weeks?

A. Yes.

Q. Of course, Mr. Brodnicki, you are not telling us, are you, that the 30.3 per cent increase in the volume of meat is due to an increase in the marketing hours from 9:00 p. m. to 11:00 p. m., are you?

A. I would say the study indicates a very appreciable—could I state it this way?

Q. Please.

A. I can't answer it yes or no, but could I state  
315 it in this manner?

Q. State it in any way you think it is right.

A. Even though, in some of the before and after situations, you see, there appeared to be even no change, I would say that by the same token that those figures have not been excluded because they do not prove the point, and just because some other figures over-prove the point, I think that is some of the factors that make up any average

of specifics because you have your highs and your lows, and that is all I can tell you.

316 By Mr. Dunau:

Q. Mr. Brodnicki, even the average, you would at least have to confirm your average, would you not, sir, to that portion of the increase in the volume of meat which resulted from the increase in marketing hours, would you not?

A. I don't understand quite—

Q. You are averaging, you say. Correct?

A. Yes, sir.

Q. In making your average, you are including in it all increase in the sale of meat which occurred in a store, are you not?

Mr. Christensen: Now, if the Court please, I don't know what figure counsel is now talking about. What we are trying to establish is the differential between stores.

Of course, our meat sales, company-wide, went up during all these periods. And the witness has told him repeatedly that there runs through on an average of 15 per cent differential. I don't know what average you are now talking about.

Tell the witness.

317 By Mr. Dunau:

Q. Mr. Brodnicki, in arriving at this 15 per cent—

A. Yes, sir.

Q. Did you include the figures which made up your 30.3 per cent on 7240 Hammond?

A. Yes, sir.

318 Q. At 7240 Hammond, the change which took place was in the increase in marketing hours from 9:00 to 11:00 P. M., Monday through Friday, is that correct?

A. Yes.

Q. That is what added to the hours?

A. Yes, sir.

Q. Ten hours, 9:00 to 11:00, correct?

You show for that period a 30.3 per cent increase in the sale of meat, correct?

A. Yes, sir.

Q. Are you attributing this 30.3 per cent increase in the sale of meat to opening the market between 9:00 P. M. and 11:00 P. M., Monday through Friday?

320 A. This would be the full effect of the store before and after.

Q. You, in other words, took the 30 per cent increase in meat and attributed it entirely to increase in marketing hours from 9 p. m. to 11 p. m. on Monday through Friday, is that it?

A. I said it was one of the factors operating.

321 Q. Let's see if we can get at it in this way, Mr. Brodnicki:

On this Plaintiff's Exhibit 13 for identification, you show meat sales increasing from \$9,667.00 to \$11,505.00, is that right?

A. Yes, sir.

Q. In arriving at your \$11,505.00 figure did you  
322 include all the increase in the sale of meat at 7240-Hammond?

A. I took the full sales of that store in those weeks.

Q. Mr. Brodnicki, the 1755-Whiting store had the same change of hours at the same time, did it not?

A. Yes, sir.

Q. For that period the Whiting store 1755 had an increase in the sale of meat of 12.7 per cent; is that correct?

A. Yes, sir.

Q. Can you account for the reason that notwithstanding the same increase in marketing hours you had a 12.7 increase in the sale of meat in Whiting, as against a 30.3 per cent increase at Hammond?

323 A. Possibly this operation had a different effect on our customers in that area.

Q. Other facts are entering into it than the marketing hours; is that it?

A. Possible effect on customers is one factor.

Q. All right. Let's go to the last one, Mr. Brodnicki, the Michigan City store.

As I read your document, before the expansion in the market operating hours, your meat department was operating 9 a. m. to 9 p. m., Monday through Saturday, is that correct?

A. Yes, sir.

Q. The expansion was to operate the meat department from 9 p. m. to 11 p. m., on Thursday and Friday, is that correct?

A. Yes, sir.

Q. So you had a four hour increase in market operating hours between the hours of 9 p. m. and 11 p. m., correct?

A. Yes, sir.

Q. And you show an increase in the volume of sale of meat of 59.2 per cent, is that it?

324 A. Yes, sir.

Q. And you included in your figure in ascertaining the increase in the volume of sales of meat, you included the entire 59.2 increase, did you not?

A. Yes, sir.

Q. You were therefore acting on the assumption that the entire 59.2 per cent increase was due to increase in marketing hours in that store from 9 p. m., to 11 p. m., on Thursday and Friday; is that correct?

325 A. No, if you read my footnote, there was another change.

By Mr. Dunau:

Q. Would you tell me the change, as indicated in the footnote?

A. Eleven weeks prior to this expansion of night meat selling hours, Saturday p. m., hours were extended from 6 p. m., closing to a 9 p. m., closing.

Q. Well, when you say eleven weeks prior to this expansion?

A. Each of these periods are four week accounting period.

Q. Yes?

A. And if you were to look at the difference between 1 and 2, which shows—it was like a plateau effect. Part of it was when we opened on Saturday night. Part of it was when we changed the other facet.

326 Q. Well, let me see if I understand, Mr. Brodnicki: First let's begin with the statement in the footnote, "Eleven weeks prior to this expansion of night meat-selling hours, Saturday P. M. hours were extended from a 6:00 P. M. closing to a 9:00 P. M. closing"?

A. Yes, sir.

Q. Now will you tell me when that occurred, based on that?

A. This would be based on our first accounting period in 1961.

Q. Give me a date; I cannot understand it that way.

A. I will point here.

During this period of time, here (indicating).

Q. In January of 1961 you increased the hours of marketing from 6:00 P. M. to 9:00 P. M. in the meat department of your Michigan City store, is that it?

A. Yes, sir.



Q. All right, then let me ask you this:

327 Let us assume that your entire period of "before" excluded any operation of markets on Saturday after 6:00 P. M., so that your entire period and eleven weeks less than the entire period, had no operation on Saturday from 6:00 P. M. to 9:00 P. M.

Then I would ask you this: The expansion in marketing hours on that assumption is 9:00 P. M. to 11:00 P. M. on Thursday and Friday, and 6:00 P. M. to 9:00 P. M. on Saturday, is that correct?

A. That's right.

Q. That gives me seven additional marketing hours, as a result of the change, correct?

A. Yes, sir.

330 Q. Mr. Brodnicki, please look at your Item B Recap pertaining to performance for all Jewel stores.

A. Yes, sir?

Q. As of the year 1954-55, all Jewel stores show an average earnings of \$3,383, is that correct?

A. Yes, sir.

Q. And for the succeeding year, 1955 to 1956, they show a \$4,776 increase in earnings, is that correct?

A. During those time periods indicated.

Q. Yes, so—

A. It is a portion of those years, yes.

Q. Well, it is the full year, is it not? And you are taking the full year in each case?

A. It would be the portion of the year, as indicated back on that page.

Q. But it is an annual period?

A. It is a one-year period, yes. Those figures are correct.

331 Mr. Christensen: So I understand, Mr. Witness, that the years in here are not necessarily full calendar years?



The Witness: Yes, it would be the—that is correct.

Mr. Christensen: They mark a 12-month period that come in the calendar years that you have noted on here, to correspond with the—

The Witness: Corresponding with the particular store they are being compared with.

By Mr. Dunau:

Q. But in using the comparison, you are using the full year?

A. Fifty-two weeks.

332 Q. Now the before period, 1954 to '55, for all Jewel stores, is an average of \$3,383.00, correct?

A. Yes.

Q. The succeeding is \$4,776.00, is that correct?

A. Yes.

Q. What is the percentage increase for all Jewel stores, sir?

A. It appears to be about 38 per cent, I believe.

Q. My arithmetic gives me 41 per cent. Would you care to take a pencil and paper—

A. I believe you are correct.

Q. 41 per cent?

A. That sounds reasonable; yes, sir.

Q. Are you accepting 41 per cent, sir?

A. It is within one or two per cent, I am sure.

Q. During that period of time when all stores were increasing by 41 per cent, you had a change in the hours of 341-Joliet and 1161-Joliet, is that it?

A. Yes.

Q. In 341-Joliet, before the change, you showed average annual earnings of \$2,480.00?

A. Yes, sir.

333 Q. After the change you show it at 4700—is that one? I am sorry, that is the wrong figure.

A. You are on the wrong line.

Q. \$4,013.00?

A. Yes, sir.

Q. What is the percentage increase?

A. It appears to be about 65 per cent.

Q. I think you would find, if you did the arithmetic, that it was 61.8 per cent. Do you accept that?

A. Yes, sir.

Q. Now you take your 1161 store for the same period, your average earnings before were \$3,383.00, correct?

A. For the company or for the store?

Q. For the store, sir?

A. I believe they are—

Mr. Christensen: Which store?

By the Witness:

A. I believe they are \$8,284.00. Store 1161.

By Mr. Dunau:

Q. Store 1161?

The Court: Counsel has inquired which store.

334 By Mr. Dunau:

Q. 1161 would be—

A. 8,284.00, is the figure.

Mr. Christensen: \$8,284.00, Mr. Dunau.

Mr. Dunau: You are quite right, \$8,284.00.

By Mr. Dunau:

Q. And what was the average annual earnings for the succeeding earnings after the change?

A. \$8,951.00.

Q. What is the percentage increase?

A. Roughly 9 per cent.

Q. 9 per cent is very good. I have 9.1 per cent.

As I understand it then all Jewel stores increased 41 per cent. It would be 341-Joliet store increased 61.8 per cent, and the 1161-Joliet store increased 8.1 per cent.

Do you account for the difference from the average performance by the market operating hours?

A. I would say if they did not sell meat at night the spread would be greater.

Q. What correlation is there, Mr. Brodnicki, on the basis of any figures you have, between an increase of 61.8 335 per cent in the 341-Joliet store, and a 41 per cent increase in all Jewel stores?

A. I don't understand what you mean by "correlation."

Q. Mr. Brodnicki, let's go to 1958:

For the period preceding the change dealing with all stores in 1957—

Mr. Christensen: What exhibit, counsel? What page?

Mr. Dunau: Item B recap.

336 Mr. Christensen: B recap?

Mr. Dunau: Yes.

Mr. Christensen: Yes, sir, all right.

The Witness: Yes, sir.

By Mr. Dunau:

Q. Do you show \$5,286.00 as the average earnings for all stores?

A. Yes, sir.

Q. For the succeeding annual period you show an increase of \$5,515.00, is that correct?

A. Yes, sir.

337 Q. What percentage increase is that, sir?

A. Roughly about seven per cent.

Q. Would you like to try again? Isn't it about 5.3 per cent?

A. That is probably accurate.

Q. Probably accurate?

A. I would say you are right.

Mr. Christensen: The figures all appear on here, you don't have to do them out of your head.

The Witness: Actually, the computations were—

By Mr. Dunau:

Q. Take your 15-Aurora store:

That changed marketing hours during that period, did it not?

A. Yes, sir.

Q. Before the change, you had average annual earnings of \$5,157, correct?

A. Yes, sir.

Q. After the change you had a drop, \$5,024, correct?

A. That's right.

338 Q. You had a decrease of earnings in that store of 2.6 per cent, is that right?

A. Yes, sir.

Q. At the same time that you had an increase in other stores, all stores average, by 5.3 per cent?

A. That's correct.

Q. Take in 950 Store, sir, Aurora:

Average annual earnings, \$5,206, right?

A. That's right.

Q. A drop for the succeeding year of \$4,700—to \$4,750, correct?

A. Yes, sir.

Q. A decrease in that store of 8.8 per cent, correct?

A. Yes, sir.

Q. Notwithstanding an increase of 5.3 per cent in all other Jewel stores, right?

A. Yes, sir.

Q. Take your 368 Store, Elgin:

For the same period, average earnings before the change \$3,777, right?

A. Yes, sir.

339 Q. After the change, \$4,700, right?

A. Yes, sir.

Q. An increase of 24½ per cent, correct?

A. Yes, sir.

Q. Take your 515 Store, Geneva:

Average earnings before the change of \$11,878, is that right?

A. Yes, sir.

Q. That was well in excess of the Jewel average before a marketing hours change, was it not?

A. Yes, this is above the average.

Q. An increase, after the change, to \$12,964, correct?

A. Yes, sir.

Q. Showing an increase of 9.1 per cent, right?

A. Yes.

Q. Let's go to 1956-57. That was the after.

That pertains to your 7240-Hammond, and 1755-Whiting stores, does it not?

A. Yes, sir. I believe so, yes, sir.

Q. At your 1755-Whiting store before the change, you had average earnings of \$2,620, right?

340 A. Yes, sir.

Q. After the change, \$3,142, correct?

A. Yes, sir.

Q. Does that give me an increase of 20 per cent?

Mr. Christensen: That's what the exhibit shows.

341 By Mr. Dunau:

Q. Your 7240 Store, Hammond, for the same period, before the change, \$2,786, correct?

A. Yes, sir.

Q. After the change, \$3,884, correct?

A. Yes, sir.

Q. What was your increase in earnings?

A. 39.4 per cent.

342 Q. During the period from 1960 to 1961, did you have an average Jewel performance for all stores of \$5,588?

A. Yes, sir.

Q. Was that reduced in the succeeding year to \$5,436?

A. Yes, it was.

Q. Is that a 2.8 per cent decrease?

A. 2.7 per cent.

Q. All right, sir.

During the same period your Michigan City store, Item 84, showed an increase in earnings of 110.3 per cent, did it not?

A. Yes, sir.

Q. Mr. Brodnicki, do you know whether in Joliet  
343 there is a third store, Jewel store in operation, in addition to the two that we have been discussing on your survey?

A. Yes, I believe there is a store called Hillcrest.

Q. Hillcrest?

A. Yes, sir.

Q. What are the market-operating hours in the Hillcrest store, sir?

A. They are not open at night, I don't believe.

I will take that back. They sell meat on Friday night and they sold meat on Friday night ever since they have been open.

Q. I think that's wrong. Would you take another look, sir?

A. Well, this study was conducted in the years 1954 to '56, and that store opened in '58.

Q. Well, let's make it easier.

On Page 2 of the last pages of your document, you have a listing for Hillcrest-Joliet, correct?

344 A. Yes, sir.

Q. The last column shows store hours, market, does it not?



A. Yes, it does.

Q. And it shows that the store hours in the market are 9:00 to 6:00, does it not?

A. Yes, sir.

Q. There are no night hours in that store in Joliet, is that correct?

A. You are right.

Q. There are no night operations in that store, is that correct?

A. You are right, sir.

345 Mr. Dunau: Would you mark that as Defendant Union's Exhibit 1 for identification, please?

(Said document was marked DEFENDANT UNION EXHIBIT NO. 1, for identification.)

349 FRANK GARCHER, a witness, by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

350 *Direct Examination by Mr. Christensen.*

Q. Will you please state your name?

A. Frank Garcher.

Q. Where do you live, Mr. Garcher?

A. My address is 3321 West 66th Place.

Q. And you are employed by whom?

A. Jewel Tea Company.

Q. Jewel Tea Company?

A. Yes.

Q. In January of 1948, what was your position with Jewel Tea?

A. Store manager—grocery store manager.

Q. That store was located where?

A. In 1948?

Q. In 1958.

A. 7921 South Cicero.

Q. In Chicago?

A. In Chicago.

Q. Do you recall the circulation of a customer questionnaire survey in your store in January of that year?

A. Yes, sir, I do.

351 Q. I now show you Plaintiff's Exhibit 12, for identification, and ask you if that is identical with the questionnaire that you circulated in your store at that time?

A. Yes, it is.

Q. Mr. Garçher, in what way were those questionnaires circulated or made available to the customers in your store?

A. Well, we took a card table and set it up in the front of the store, and had a girl available to pass those out to customers as they walked in.

We had pencils available for the customers, and we set up a box, just like a ballot box, and as the customer  
352 filled those out, they put them in the box.

When the girl would go to lunch, she would take the balance of the ballots and pass some of them out to the girls who were checking, and then the girl—the girl who was there would also pass them out while she was at lunch.

Q. Now, the girls who were checking, that means the girls there in your store who were at the pay-out counters and checked over the goods and took the customers' money?

A. Yes.

Q. Where the customer has to go by the checker to get out?

A. That is correct.

Q. Is that not right, sir?

A. That is correct.

353 Q. At the conclusion of the balloting did you tabulate the results in your store?

A. I believe we did, sir. I have one right here that was concluded from the—

Q. Does that bear your signature?

A. Yes, sir, it does.

Mr. Christensen: Please mark this Exhibit 12-A, for identification.

(Said document was marked as requested.)

By Mr. Christensen:

Q. And is that the correct tabulation of the ballots cast in your store in the month of January and the various questions asked on Exhibit 12?

A. That is correct, sir.

Q. What did you do with the yellow sheet, Exhibit 12-A, after it had been completed, I take it under your supervision and you signed it, then what happened with it so far as you know?

A. We sent this to the office. I believe it was addressed to Mr. Woerthwein.

Mr. Christensen: You may cross-examine.

354

*Cross-Examination by Mr. Dunau.*

Q. Mr. Garcher, how many entrances are there at the store at 7921 South Cicero?

A. Well, there is—from the south side there is an entrance in the store, and on the north side there is an out entrance.

Q. You can get into the store either from the south side or from the north side, is that correct?

A. That is correct.

Q. Where did you set up this table, sir?

A. At the south end of the store.

Q. What about the customers who would come in and go out at the north end?

A. Well, there would be very few that come in that way. It is an out door. It has a big "out" on it.

The only way they can come in that door is that if somebody is going out while the door is open they can come in.

Q. Perhaps I misunderstood.

One door is normally used as an entrance and one as an exit?

355 A. That's right.

Q. You put the table up where?

A. At the incoming door.

Q. The incoming door?

A. Yes.

Q. And each customer who came in was given a questionnaire by the girl sitting at the table, is that it, sir?

A. That is it.

Q. Now when this girl went out to lunch you had another method of distributing the questionnaires, did you not?

A. That is right.

Q. And this was to have the checker stuff them into the bag of groceries, is that the way it worked?

A. Well, either stuff them in her bag or they handed them to the customer to read, if they wanted to fill them out immediately. They would go to the table and fill them out and put them in the box.

Q. What period of time would elapse, would be taken up by the checker distributing the questionnaire?

A. At the time she passed them out?

356 Q. Yes, how long did she do it, rather than the girl at the table?

A. Oh, probably just a half a minute or so.

Q. No, I am sorry, I didn't make myself clear:

The girl at the table would go off for lunch?

A. Right.

Q. How long would she be gone?

A. One hour.

Q. During that one hour the checker would be distributing the questionnaires, is that correct?

A. That is right.

Q. How many checkers in this store, sir?

A. Seven.

Q. Did each one of them distribute?

A. Each one of them had some ballots to pass out.

Q. Over what period of time did the distribution take place in your store, sir?

A. You mean the whole period?

Q. Yes?

A. Thursday, Friday and Saturday.

Q. Three days?

A. Three days.

357 Q. How many customers ordinarily pass through your store in that three day period?

A. Oh, there is quite a number. I couldn't say exactly.

358 Q. Would you have an approximation, sir?

A. Probably about three thousand.

Q. You had three thousand customers passing through the store during that 3-day period?

A. Right.

Q. Do you have any idea of how many of them would be repeat customers? That is, how many that had come in on Thursday, would come in on Friday?

A. I couldn't say, sir.

Q. Would it be a substantial number?

A. It would.

Q. Excluding repeat customers, do you have an approximation about how many customers passed through the store, your store, during the 3-day period that the questionnaire was distributed?

A. Three days?

Q. Yes, for those three days?

A. In the neighborhood of three thousand or more.

Q. In the neighborhood of three thousand?

A. Yes.

Q. And how many questionnaires did you receive 359 to distribute during this time?

A. Sir, I don't recall.

Mr. Dunau: I have no further questions.

*Redirect Examination by Mr. Christensen.*

Q. One additional question:

Mr. Garcher, have you circulated questionnaires or opinion surveys amongst your customers on other subjects in recent years?

A. Yes, we have, sir.

Q. And was this done in the way the company usually distributes a questionnaire when it is endeavoring to get information from its customers?

A. That is correct.

360 ROBERT THOMAS MARSHALL, a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name for the record?

A. My name is Robert Marshall, Robert Thomas Marshall, Jr.

Q. Where do you live, Mr. Marshall?

A. I live at 14717 Chicago Road in Dolton, Illinois.

Q. And in January of 1958, were you employed by the Jewel Tea Company?

A. Yes, sir. I was manager of the store at 6227 South Kedize.



Q. Chicago?

A. Chicago, yes, sir.

361 Q. Do you recall a circulation in your store of a questionnaire identical, except for store number, Plaintiff's Exhibit 12, for identification?

A. Yes, I do. I recognize the questionnaire.

Q. Will you explain to Judge LaBuy how circulation of that questionnaire was conducted in your establishment?

A. Yes. I took and I set—I took the questionnaires and I set them on top of what we call turkey order boards, sort of a desk-like affair that sits over one of the carts.

I put them on top of the cart, on top of the board, and I had pencils. In back of it we had a sign asking the customers if there was a need for them to shop nights, or if they really wanted to shop nights. They could vote on it.

We also had a ballot box there.

Q. Just before you go on, do you know where that sign is now?

A. No, I don't know where the sign is now.

Q. Was it destroyed when you were through with it?

A. Yes, it was.

362 After we were through with it, and it had served its purpose, we destroyed it.

Q. Go ahead and explain what went on?

A. I put it in the first aisle, right next to the market, so people could see it as they came in the store. They couldn't miss it if they were going to buy meat.

Q. At the end of the tabulating time, did you collect the ballots and total them up?

A. Yes, I did.

Q. Do you have your tabulation of that available on the stand in your hand?

A. Yes, I have.

Q. May I have it one moment?

A. Here you are.

Mr. Christensen: May this be marked Plaintiff's Exhibit 12-B for identification?

(Said document was marked Plaintiff's Exhibit 12-B, for identification.)

363 By Mr. Christensen:

Q. Is the yellow sheet, Exhibit 12-B, your tabulation and report on the results of this balloting, or opinion survey?

A. Yes, it is.

Q. When you were through with it, did you send it in to Mr. Woerthwein at headquarters?

A. Yes, I signed it and sent it to him.

Q. Was it true and correct to the best of your information at the time you did it?

A. Yes, sir.

Q. And have you conducted other opinion surveys among your customers in your store?

A. Yes, I have, sir.

Q. Was this conducted in the way that the company usually conducts an opinion survey on any subject it is trying to ascertain the desires of its customers with respect to?

A. Yes.

Mr. Christensen: You may cross-examine.

364 By Mr. Dunau:

Q. Sir, did I correctly hear that the store that you manage is 6227 South Kedzie, K-e-d-z-i-e?

A. Yes, that's right.

Q. Over what period of time, sir, did you have the questionnaires distributed in your store?

A. It was, I think, over the week-end. Thursday, Friday and Saturday.

Q. And during that period of time, how many customers would normally patronize the store?

A. I would say about twenty-five hundred.

Q. About twenty-five hundred?

A. Yes.

Q. In your store, Mr. Marshall, did you use any method of distributing the questionnaires, other than to put it on this turkey counter or whatever it is called?

A. No, I just set it on the desk—turkey order board, with this sign.

365 CHESTER CHEKI, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name for the record?

A. Chester Cheki, C-h-e-k-i.

Q. Where do you live, Mr. Cheki?

A. 7921 Berwyn Avenue, Chicago.

Q. In the month of January, 1958, were you a manager of a Jewel store?

A. Yes, I was, at 2951 Central Street in Evanston.

Q. Do you recall the circulation in your store of a questionnaire opinion survey, identical to Plaintiff's Exhibit 12 for identification?

A. I do.

Q. And will you please state how it was distributed to the customers in your particular store?

A. Yes, we had set up—we had placed a girl in the first aisle, or the incoming aisle of the store, to pass these out to the customers. We passed them out for 366 three days. We had placed a deposit box at the end of the meat counter. It was a very tight store, and everybody would have to pass the meat counter.

Q. Tight store, you mean there wasn't too much space, small store?

A. That's right.

Q. And did you provide pencils for these people?

A. Yes, the contraption is sort of a podium with a slot to deposit the ballots and a place for pencils.

Q. It is a device that is made just like this podium. If a customer wants to order turkey in advance, she can order it and put the order in here (indicating)?

A. That is what it is commonly used for, yes.

Q. And you used it as a ballot box?

A. Correct.

Q. At the conclusion of the balloting, did you tabulate the results?

A. We did.

Q. And was that done under your supervision?

A. Yes, it is.

367 Q. You ultimately signed it?

A. I did.

Q. And sent it in to the headquarters?

A. I did.

Mr. Christensen: Please mark this Plaintiff's Exhibit 12-C, for identification.

(Said document was marked Plaintiff's Exhibit 12-C for identification.)

By Mr. Christensen:

Q. And was 12-C true and correct?

A. Yes, sir.

Q. To the best of your knowledge, at the time it was filled in in January, 1958?

A. Yes, sir.

Q. Was this survey conducted in the ordinary course of business, and this record made in the same fashion that you had made customer surveys on other topics for Jewel Company during the last several years?

A. Yes, sir.

Mr. Christensen: You may cross-examine.

368 By Mr. Dunau:

Q. Mr. Cheki, I am not sure I understood. Would you explain for me again the method of distribution which was used in your store?

A. Yes, I had received six hundred ballots, and we had passed out two hundred a day.

Q. How did you pass them out?

A. The girl passed them out until the two hundred were gone.

Q. Where was this girl stationed?

A. At the incoming aisle, right past the turnstile.

Q. You have one incoming aisle?

A. That's right.

Q. And as the customer came in the girl would distribute a questionnaire to the customer?

A. Right.

Q. This was a three-day period?

A. Yes, it was.

Q. How many customers customarily passed through your store during this three-day period?

A. Well, I would say between 2,000 and 2,500.

Q. Could a customer have gotten two questionnaires?

A. Oh, it is possible. Unlikely.

Q. Was any check made to determine whether a  
369 customer deposited a questionnaire twice?

A. There was no check, but I am the floor manager. I do stay out on the floor, and I would have no doubt noticed if they were being stuffed or—I didn't notice any unusual action, let me put it that way.

370 DONALD JOHN ZANZIG, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christenson.*

Q. Will you state your name for the record, please?

A. Donald John Zanzig, Z-a-n-z-i-g.

Q. Where do you live, Mr. Zanzig?

A. I live at 14334 South University Avenue, Dolton, Illinois.

Q. In the month of January, 1958, were you employed as a store manager by Jewel Tea Company?

A. Yes, I was.

Q. At what store?

A. 12730 South Halsted, Chicago, Illinois.

Q. Do you recall the circulation of an opinion survey identical with Plaintiff's Exhibit 12 in your store in that month?

A. Yes, I do.

Q. Would you tell Judge LaBuy how that was distributed and collected in your particular store?

371 A. In my particular store it was on a voluntary basis. We had set up a display using this same turkey order board, placed on top of two toilet tissue boxes, in our last aisle.

We would call it the last aisle before hitting the check-out department. And we placed a supply of questionnaires along with pencils for the customer to select and fill out.

We used a sign which was provided attached to this turkey order board.

Q. Your sign also destroyed, as you heard the witness testify.

In substance, the sign asked them to express their opinion as to night necessity or need of night operations in the meat department?



A. That is correct, sir.

Q. At the conclusion of the balloting were the results tabulated either by you or under your supervision?

A. Yes, sir.

Q. Did you then report them to the company?

A. Yes, I did.

372 Q. Is Exhibit 12-D your tabulation of the results in your store of survey conducted in the manner you have described?

A. Yes, sir.

Q. One other subject with this witness as long as I have him here.

What is your present position with the Jewel Tea Company?

A. I am the store manager of a store now called Food City, located in Highland, Indiana.

Q. Operated by the Jewel Tea Company, but operated under the name of Food City, is it not?

A. Yes, sir.

Q. It handles different brands of goods?

373 A. Yes, sir.

Q. None of the Jewel brand names, as I understand it?

A. That is correct, sir.

Q. Does it have a self-service meat department?

A. Yes, sir.

Q. How many evenings a week are butchers present at the self-service meat department?

A. At present there are two nights a week.

Q. Two nights a week?

A. Yes, sir.

Q. And how many nights is the meat department open?

A. I would like to stipulate one thing there, if I may.

Q. Yes.

A. We have a sausage department in our store, where there is either a butcher or butcher ap available every night of the week. But if you are referring to the fresh meat counter—

Q. Fresh meat counter.

A. It would be two men—one man for two nights.

374 Q. And is the store open nights beyond those two nights?

A. Yes, sir, we are open six days a week, from 9:00 in the morning until 10:00 o'clock at night.

375 Q. Week in and week out, what is the relative volume of meat sales up to the hour of 6:00 p. m. and after the hour of 6:00 p. m.?

A. We have found, sir, that our sales in both groceries, produce and meat are equalized in the evening sales from the hours of 6:00 until 10:00, according to our sales record kept in the store, and of that, from 9:00 on until 6:00.

Q. You sell as much, on the average, after 6:00 o'clock, as you do in all the hours before?

A. That is right, sir.

Q. And you are open from 6:00 until when?

A. We are open each day from 9:00 o'clock in the morning until 10:00 o'clock at night.

Q. From 9:00 o'clock in the morning until 10:00 o'clock at night or in the evening?

A. Yes.

. . . . .

*Cross-Examination by Mr. Dunau.*

Q. How many customers passed through your store during the period that you distributed the questionnaire?

376 A. That is rather difficult to answer accurately, sir, and I would have to say in the neighborhood of about 2,500.

Q. And during what period did you have the questionnaire distributed, sir?

A. Well, I had mine available for a complete week, to my knowledge, and I believe it was a few days longer than that.

They set this up and then let it run until—well, we set it up on a voluntary basis rather than having a person distribute them. I put mine up, I would say, upon receipt of the questionnaires, and I would put them out each day and send them in at the end of the period.

Q. You say that you sent them in at the end of the period?

A. Yes.

Q. Between the time you received them and the time you sent them in, how many days elapsed in which the store was open, sir?

A. I would have to say six days only.

Q. Six days?

A. Yes.

377 Q. At the store you presently manage, what are the hours of operation of the meat department?

A. The hours of the meat department are the same as the entire store.

Q. And what is that?

A. From 9:00 o'clock in the morning until 10:00 at night.

Q. And from 6:00 to 10:00, how many butchers do you have on duty, sir, on Monday?

A. Excluding our sausage shop, as I previously stated, we have a man available on Friday and Saturday nights.

Q. Now, including the sausage shop, you have them available on each night of the week, is that right?

A. Yes, but it is being considered two departments in the store, though. I am trying to make myself clear on that. It is not attached, and I would have to refer to it

as the cooked foods department, this other department.

\* \* \* This other department that I am referring to, 378 which is under the operation of the meat department, would have to be referred to, I believe, as the cooked foods department, having other than meat items available.

By Mr. Dunau:

Q. Is it part of the meat department?

A. It is managed under the meat department.

Q. Is the person who works in there on Monday, Tuesday, Wednesday and Thursday, sir, is he a member of one of the local unions of the Amalgamated Meat Cutters?

A. Yes, sir.

Q. During Monday, Tuesday, Wednesday and Thursday, does that man also help with other items in the meat department outside of the sausage department?

A. No, sir.

Q. He does nothing with respect to other items?

A. No, sir.

Q. If a customer would ask him about a piece of steak, he would say that "It is not in my business"?

A. Well, this is a question that I have never witnessed —an incident of that nature, so I could not answer the question.

379 Q. Well, have you ever witnessed a customer asking this man about fresh meat during the other nights of the week?

A. No, sir, I have not.

Q. Have you directed him not to work in the other parts of the store during other nights of the week?

A. I have not.

Q. Does he clean the case out, sir, at the end of 10:00 o'clock, in the entire meat department?

A. No, sir.

Q. Does he rearrange the case during the hours that he works on Monday, Tuesday, Wednesday or Thursday?

A. No, sir.

Q. Why do you, for Monday, Tuesday, Wednesday and Thursday—why do you confine him to one part of the meat department, sir?

A. Who?

Q. You, sir, why do you confine him to one part of the meat department?

A. As I have previously stated, this is a separate department, and there are many items available in this department. It is a service department; is it not a self-380 service department, and, therefore, it needs an attendant.

JOHN ILIKA, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Would you please state your full name for the 381 record, sir?

A. My name is John Ilika.

Q. Where do you live, sir?

A. I live at 12217 South 68th Court, Palos Heights, Illinois.

Q. During the month of January, in 1958, what position did you hold with the Jewel Tea Company?

A. I was division manager, operating division manager of the Northern Division at that time.

Q. In a general way, sir, describe the boundaries of the Northern Division.

A. Well, the boundaries of the Northern Division at the time were approximately Oak Street to the south, Waukegan to the north, and Barrington to the west.

Q. And approximately how many stores were in that division?

A. There were, I believe, 70 stores in that area at that time.

Q. Do you recall that in that month an opinion survey, of which Plaintiff's Exhibit No. 12 is a sample, was taken in the stores?

A. Yes, I do.

382 Q. Were you in several of the stores in that division during the time that that opinion survey was being conducted?

A. Yes, I was.

Q. You have been here in the last few minutes and you have heard the last four witnesses testify as to the various methods by which this was made available to customers in the store, and is their testimony typical of what you actually observed as to the distribution of that document in your division during that period?

A. Yes, I would say that the method of distribution of these questionnaires depended on the size of the store and the volume of the store, and also the amount of help available at the time.

One man did it one way that was the most efficient way for him to do it, and then somebody else would do it the other way, but all of these methods were used as the men stated.

Q. Has the company, from time to time, conducted other surveys or put other questionnaires out to its customers?

A. We always do, sir. We like to go to our cus-  
383 tomers and ask them to tell us about some of the problems they face.

Q. And these particular ballots or questionnaires were circulated in the same way that you have circulated questionnaires upon other subjects the management believes



desirable to ascertain the customers' views on, is that correct?

A. Yes, sir, they were.

*Cross-Examination by Mr. Dunau.*

Q. Mr. Ilika, what stores were you in in which you observed the questionnaires distributed?

A. This, sir, would be a very difficult question to answer at this time, but I would say that in the course of a week at that time I would get into about 15 to 20 of my stores.

Q. Let's take one or two of them, and can you recall one store that you were in?

A. No, I can't. Of the 15 or 20 you can't always remember.

Q. You are telling me that of the 15 or 20 stores that you cannot now remember any one of them, sir?

384 A. No, this would be a very hard thing to do, and I would just be guessing, if I did.

Q. How long did you stay in the store, sir?

A. On my visit to the store, the length of my visit to the store would depend on the reason I went into the store, and if I had a problem, I would probably stay there longer. If I did not have a problem, and I was just there for a normal visit, I would say, I would just stay for about 15 or 20 minutes. In some of the stores I may stay as long as two or three hours, depending upon why I had come to the store or why I had gone there.

385 Q. Take the store with the problem where you were two or three hours. Would you be in the store or would you be in the office of the store?

A. I would be in the store.

Q. Observing the operation, sir?

A. Yes, sir.

Q. In these fifteen or twenty stores that you were in, what is the number of customers that would be going

through the store during the period of the distribution of the questionnaire?

A. Well, this again would depend upon the size of the store, the location of the store. It is in a congested area, is it in a suburban area. It would be very hard to tell how many customers go through a certain store at a certain time.

The customer count on the store might run from three thousand to eight thousand.

Q. The stores you visited the customer counts, that would vary between three and eight thousand; sir?

A. Or less or more.

Q. At least there would be some that would have three thousand going through the store during the period 386 of the distribution?

A. I would say it would.

Q. Some eight thousand?

A. I would say so.

Q. How much below three thousand would you take it, sir?

A. Well, we have some pretty small volume stores where your customer count would be less than three thousand.

Q. How much less, sir?

A. I couldn't say.

Q. How much higher than eight thousand would you take it?

A. Well, some of the real large volume stores have a considerably larger count than that.

Q. About how high would that larger count go, sir?

A. It could be any number. I wouldn't guess.

Q. Nine thousand?

A. I wouldn't guess at all.

Q. You have a notion, do you not, sir, of at least one store in your division which has more than eight thousand

customers going through during the period of a distribution, do you not?

A. I would say yes, at that time.

Q. All right. Select one of those stores that you have in mind and tell me if that store, or how many customers go through the store which has more than eight thousand customers?

A. How many more customers than eight thousand?

Q. Yes, sir, in any particular store?

A. This would depend upon the volume of the store entirely, and it would be pure guess on my part.

It could be anywhere from fifteen hundred to eight thousand and five thousand and six thousand. It depends on the volume of the store.

Q. Well, perhaps I have not made myself clear, sir.

In your division I understood you to say that you had stores in which, during the period of distribution, more than eight thousand customers would be going through the store, is that correct?

A. A weekly customer count I would say is eight thousand, yes.

Q. But did you also state that there were some stores which had more than eight thousand customers going through a weekly customer count?

A. Yes.

Q. Now, as to one such store, tell me how much more than eight thousand there would be?

A. This would be a pure guess. I say that there are some that are eight thousand, or we have had some that are eight thousand and some are more.

Q. But you are not now—

A. I don't know what you are driving at.

Q. You are not now able to identify for me a store which has more than eight thousand customers going—

A. I can think of a store right now that I have, that

I had in my area at that time that had more than eight thousand customers.

Q. How much did that store have, sir?

A. Eighty-five hundred.

Q. Is that the range?

A. What range?

Q. Between twenty-five hundred and eighty-five hundred, sir?

A. Are you saying is this the top?

389 Q. I am asking you, yes, is eighty-five hundred the top?

A. I don't know.

Q. In the stores that you observed the questionnaire being distributed, were there some stores that distributed the questionnaire by having the checker stuff the questionnaire into the bag of groceries as the customer was leaving the premises?

A. This is not our normal procedure, to stuff questionnaires. We usually make it available to customers. There are some who refuse it and there are some who take it.

Q. Did you observe in the stores that you were in, whether the method of distribution was to stuff the questionnaire into the bag of groceries as the customer left the premises?

A. I did not.

390 FRED H. WOERTHWEIN, a witness called on behalf of the plaintiff, having been previously duly sworn, was examined and testified as follows:

*Further Direct Examination by Mr. Christensen.*

Q. Mr. Woerthwein, you are the same Woerthwein previously sworn and examined here, are you?

A. I am.

Q. I again show you Plaintiff's Exhibit 12 for identification, and ask you if that is one of the actual ballots distributed in your stores in this opinion survey with respect to night operations?

A. Yes, it is.

Q. And are Exhibits 12-A to D, inclusive, returns that were sent in to you by the respective managers?

A. Yes, they are.

Q. Now did you receive returns on similar forms from all of the managers of the stores then operating in the Chicago area in 1958?

391 A. Except those which had night sales of meats.

Q. Well, there were none of those in the Chicago area, were there?

A. No.

Q. Now, are you able to state from your records how many ballots or questionnaires were distributed?

A. 100,000.

Q. And by stores, did you have a system upon which you determined how many to distribute to any particular store?

A. Yes.

Q. Would you state what that was?

A. I have a list of store addresses, and I supplied stores with some four hundred up to twelve hundred of these ballots per store.

Q. How did you make your choice as to whether they got four hundred or one thousand?

A. Volume, sales volume.

Q. And would you just state what the classifications were?

A. It was just an arbitrary grouping on my part. The volume is related quite directly to the customer count.  
392 I wanted to take a random sample of the customers that were passing through a store for this opinion. The smallest group of stores received four hundred. The size next larger received six hundred. Then up to eight hundred, one thousand, and finally, twelve hundred in the very large stores.

Q. As determined by volume?

A. By volume.

Q. How many grand total of questionnaires were returned?

A. I received back from the stores 18,775 of these questionnaires.

Q. How many "Yes" responses did you receive?

A. 16,747.

393 Mr. Christensen: I will offer Exhibits 12 and 12-A to D, inclusive, in evidence at this time.

394 The Court: The objection is overruled, and your objection will be considered in connection with the weight to be given to this.

They are admissible.

(Said documents, so offered and received in evidence, were marked PLAINTIFF'S EXHIBITS 12, 12-A to D, inclusive.)



395. By Mr. Christensen:

Q. Mr. Woerthwein, is Exhibit 12-E your master copy of the total tabulation of results of this questionnaire?

A. Yes, it is.

Q. Now, without bothering to go through each of the figures in answer to Questions 2, 3, 4, 5, are those the tabulation of the numbers of results shown, where the customer had circled the nights that he or she wished operations to take place?

A. Yes.

Q. And you show in each instance a figure, and then below it the very small figure, I take the first line under Paragraph 2-B, night, number requests, and then under the letter M appears 207.

That means that 207 requests for Monday night operations?

A. 207 of the customers who responded yes; they would prefer to shop on nights—

Q. Also wished Monday night?

A. Also wished Monday night.

396 Q. Below that appears a figure 1.1. Is that a percentage figure, although the percentage sign is not shown?

A. This is the per cent of the number of customers who preferred number, to the total.

Q. All right.

Now, are each of the figures, each of the tabulation in the body of the report where you have this small figure under the big one, the No. 1 represents head or number of—the upper figure represents heads or number of customers responding, and the figure immediately below it represents a percentage of the total?

A. Yes, sir.

Mr. Christensen: I will offer this Exhibit 12-E in evi-

dence, rather than keeping the witness on and reading the entire matter.

Counsel has a copy.

Mr. Dunau: I have the same objection your Honor.

397 The Court: The same ruling. It may be received.

(Said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBITS 12-E.)

*Cross-Examination by Mr. Dunau.*

Q. Mr. Woerthwein, for the period that this questionnaire was distributed in the stores in the Chicago area, can you tell me the total number of customers approximately that passed through the Chicago stores, the Jewel stores?

A. Not without referring to a record, no. I cannot.

Q. Do you have an idea, Mr. Woerthwein, of the average number of customers which passed through a Jewel store in the Chicago area?

A. Currently or at that time?

Q. At the time of the survey?

A. Roughly, I would say, it was about 4500 customers per week.

398

Q. And did you—

A. This is a customer transaction count now.

Q. I am sorry, sir?

A. That is a customer transaction count. This is not the measure of the number of customers.

Q. You mean there may be more than that in that figure, sir?

A. There could have been a customer who returned more than once during the week.

Q. Right. And by how much, approximately, would the repeat customer reduce the number of customers that went through the store?

A. I don't know.

Q. Would it be substantial?

A. I don't know.

Q. Is it your experience that a customer shops once a week?

A. I don't think you can answer that question, because customers shop very differently.

399 Q. During what period of time in the overall was this questionnaire distributed in the Chicago stores? Three days, sir?

A. I think a great deal of the stores completed it, yes, the first three days, the Thursday, Friday Saturday of the survey.

Q. And during a three-day period, Thursday, Friday, Saturday, would you be likely to have repeated customers?

A. In some stores.

Q. It would not, however, I take it, be a very substantial percentage?

A. I don't believe so.

Q. And during such a three-day period approximately how many customers would pass through a Jewel store on the average?

A. About 65 per cent of our total customer count.

Q. It would be 65 per cent of?

A. Of forty-five hundred, roughly.

400 Q. Mr. Woerthwein, I show you what has been marked as Defendants' Exhibit 2 for identification, which is a breakdown of the questionnaires distributed and returned, by store, and ask you whether you are familiar with that?

A. It is a summary of the sheets that I hold in my hand.

Q. This is a summary prepared by Jewel Tea Company. Is that correct, sir?

A. Yes.

Q. And it shows the return in each store in which the questionnaire was distributed, does it not, sir?

A. Yes.

Q. And the breakdown and the number of evenings in the store?

A. Yes.

402 ANN BALL, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name?

A. Ann Ball, B-a-l-l.

Q. Is that Miss or Mrs?

A. Mrs.

Q. Where do you live, Mrs. Ball?

A. 9934 South Oakley.

Q. Chicago?

A. Chicago.

Q. Do you have an employment connection of some kind with an organization known as Market Facts, Inc.?

A. I do.

Q. And what is that connection?

A. I am an interviewer.

Q. Conducting surveys and opinion polls?

A. Correct.

Q. Do you do this full time or part time?

A. Well, I suppose full time in this case. I work  
403 for no one else but them.

Q. And did you participate in the last few days in a poll with respect to shopping habits of people in the Chicago area with respect to meat?

A. Yes, I did.

Q. Do you have with you the sheets that you used in interviewing people?

A. Yes, I do.

Q. And how were these interviews conducted, face to face or over the telephone?

A. By telephone. We had sample instructions. They were taken by the sampling method.

Q. And someone other than you determined whom you should call?

A. Yes, that was determined for us.

Q. And all that you did was place the calls on the instructions, record the answers of the person you were interviewing?

A. Correct.

Q. May I see a sample sheet, Mrs. Ball, one with the answers filled out?

A. Do you want more than one?

Q. No, just one.

404 Q. Were you given any instructions after the an-  
405 swers that the ultimate client hoped or desired to re-  
ceive from your interviews?

A. No, I didn't know anything about it. I didn't know who the client was or what—

Q. You didn't know when you called these people up that this was for the Jewel Tea Company, did you?

A. Oh, no, no.

Q. Did you know the use that was to be made of this survey?

A. No.

Q. You were endeavoring to get as truthful answers as you could to the questions that were written out?

A. Yes. My job is to merely take down what they say in answer to the question, and I give them the question exactly as it is set up for me.

Q. Well, now, your first one was 14. The tail end of it shows you called a Mrs. Harriet Mack of 2517 West Lindall?

A. Correct.

Q. Would you tell the Court just how your conversation would go, went with Mrs. Lindall?

A. "Hello, I am Mrs. Ball of Market Facts, Inc., a consumer research agency. We are conducting a 406 study of shopping habits, and I would like to speak to the lady of the household. Are you the lady of the household?"

And if we could not get the lady of the household we would call back, making several attempts to get that particular housewife.

Q. Then you would go through the questionnaire asking each of the questions in the verbiage that appears here?

A. That's right. If on the first call you got the housewife, then you would ask them the questions exactly as it is on the interview form.

Q. And you accurately recorded the data on sheets such as Exhibit 14 and 14-A?

A. I did.

Q. And the same process that you had described with respect to Interviewee Mrs. Harriet Mack—I said Lindall before, didn't I?

A. That was the street.

Q. Mrs. Mack lives on Lindall.

A. Yes, that was the street.

Q. You followed that same process?

407 A. Throughout the other—

Q. Throughout your entire stack of answers?

A. Of my quota, yes, sir.

408 Mr. Christensen: You may cross-examine.

Mr. Dunau: No questions.

Mr. Christensen: Thank you very much. You may be excused.

(Witness excused.)

Mr. Christensen: We now have and we will make avail-



able to you this interviewer's entire stack of questions, if you wish to look at them. It seems to me, however, to be a needless cluttering of the record.

Mr. Segall: Are you speaking of the individual answers?

Mr. Christensen; Yes.

Mr. Dunau: No, certainly not, not for the time being.

Mr. Christensen: We have three other interviewers present, whose testimony will be identical with that of the last witness. We can place them on the stand, if you wish.

Mr. Dunau: That will not be necessary.

Mr. Segall: They would merely identify the same 409 sort of procedure?

Mr. Christensen: The same procedure for this group.

Mr. Churchill, your group is now excused, but I would like for you to remain.

We offer Exhibits 14 and 14-A.

The Court: Do you have any objections?

Mr. Dunau: I have seen it.

410 JAMES BRODNICKI, recalled as a witness by and on behalf of the plaintiff, having been previously duly sworn, was examined and testified further as follows:

420 By Mr. Christensen:

Q. Mr. Witness, I place upon the stand here an exhibit that has been marked as 13-A for identification, Plaintiff's 13-A.

First, was this prepared under your direction? I don't mean the art work, but the—

A. I did set it up.

Q. You directed the art work as it should be done by the artist, is that correct?

A. Yes.

Q. Will you explain what this graph chart shows with relation to Exhibit 13?

A. It is primarily plotting on a chart form the figures that appear in the last two columns on the right-hand side.

The two percentage columns that appear on the table are merely plotted on a chart and shown in picture form.

Q. And the red column, showing the percentage of sales or increase, or whatever it may be, represents the performance of nine stores, as opposed to the blue columns of 421 the entire chain, excluding Eisner?

A. That is correct.

Q. For the comparable periods?

A. Yes, sir.

Q. It reflects in graph form the same information that is set forth in figures upon the Exhibit 13, is that correct?

A. Yes, sir.

Q. Now, while you are on the subject of Eisner, the Eisner chain was a preexisting chain acquired by Jewel some years ago operating in Central and Southern Illinois, isn't that correct?

A. That is correct.

Q. And its operations have not been taken into account by you in anything concerning the Chicago area?

A. No, sir.

Q. The other Jewel stores are located basically in the Chicago Metropolitan area, stretching over as far as, I guess it is, Benton Harbor, or somewhere, and into the southern edge of Wisconsin?

A. That would be the service point.

422 Q. As Racine or Kenosha?

A. That's right.

Mr. Christensen: I move the introduction of 13-A:

Mr. Dunau: As I understand it, 13-A is the same as 13, but the representation of the material is—

Mr. Christensen: It is graphic, rather than figures.

Mr. Dunau: I have the same objection to 13-A.

The Court: It is received in evidence.

(Said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT 13-A.)

By Mr. Christensen:

Q. Mr. Witness, were you requested to compile, from the company's regular records, figures and information as to the probable cost of a strike to the company in terms of expenses and loss of profits?

A. Yes, sir.

424 Q. Mr. Witness, in preparing this potential or probable cost of a strike, was it necessary for you to make assumptions as to whether all or part of the stores would be shut down?

A. Yes, sir.

Q. Will you explain to the Court what assumptions you made and what your figures show with respect to a—upon the assumption that the entire chain is shut down and that it is impossible to conduct operations?

A. Could I just explain the two basic assumptions I did make?

One is, in a complete shut-down I would assume that deliveries would cease. Deliveries would not be allowed to enter into the store, nor would our own drivers be allowed to enter the premises to bring to the store their merchandise, so from there you have two choices:

Either one, we can have a sale of the existing perishables or commodities in our store at the time, or if it is such a complete shut-down that the customers are not able to come into our store, it is conceivable that the

425 business would completely cease operations as of that night.

So we have either of two alternatives: One, to keep a skeleton crew on the premises to sell out the goods which are on the shelves and the perishables; or where the goods, the doors are closed that night, possible we have one man as a custodian to guard the store and the valuables in the store.

Q. Yes.

A. Now, in the first—I took the first assumption, that on any given day a strike hit the stores, deliveries stopped, there were picket lines in front of our stores, employees were unable to come in, and possibly the only person in the store would be our grocery manager. I went on to analyze the expenses of our business and knock out all of the variable expenses which are associated to keeping a store business going, such as the grocery sales, the grocery payrolls, would cease to be required except for the manager's salary.

Transportation costs would be almost completely nothing except for depreciation of our vehicles and the 426 rent of our garage. And there is another factor called, "All other grocery expense", which is primarily supplies, which would cease in such an eventuality.

Q. Well, now, the name supplies doesn't mean much to us out of the trade. What do you mean by "supplies"?

A. Well, bags, meat wrapping paper, and cellophane produce bags. Primarily the wrapping materials which go with the products when they leave the store. So this expense would virtually be zero and there would be no loss even though a strike was in existence on this factor.

Then in the market department I would assume that we would have basically no payrolls to pay, so there would be no loss on market payrolls during such a time period.

"Other market expense," that is primarily market sup-

plies, so we had grocery supplies up above, and now we have market supplies. And this factor would virtually cease, also. And advertising expense, during a strike we would have basically no advertising expense, no promotional expense.

427 Rents are broken down into two factors: Our regular rent, which is a continuing thing and a contingent thing. I picked up regular rent, and a contingent rent based on sales would be virtually non-existent, so I picked up the continuing rent. Depreciation would virtually continue, and so on and so forth.

428 I have analyzed each factor, determining which expenses could be eliminated in the eventuality of the closing of stores.

Now, this is the approach in which we would only have the manager as a custodian of the store.

Now, I don't believe—yes, there is a footnote on this that explains at any given time we have a million, three hundred eighty thousand dollars, approximately, of perishables on hand at any given time. This could probably, or would, most likely, enhance the loss which I have reflected if we could not keep our doors open to sell these perishable products.

Q. All right.

Now, let me take you back to Exhibit 15, if you please. It appears to be in two segments.

You show under the column, "Length of strike," a series of figures, first day, second day, through the seventh day of an anticipated strike?

A. Yes, sir.

Q. From there on you express it in weeks.

429 Now, from what source did you derive the figure "Loss of Sales"?

A. This would be the performance of all of our stores for the first thirty-six weeks of 1962. It is basically an

average of the rate of sales for this year—the first thirty-six weeks.

Q. So that if your average daily sales are one million, one hundred seven thousand dollars—

A. That's right, sir.

Q. (Continuing.) —for the entire chain in this area, excluding Eisner again—

A. Yes.

Q. Is that correct?

A. That's right.

Q. And the next item, "Continuing Expenses," are these expenses that could not be avoided by letting help go, cutting payrolls to the minimum, as you have described, those amounts to \$46,600 a day; is that correct?

A. Yes, sir.

Q. Now, again, the next column, "Loss of Earnings," based upon your average over the first thirty-six weeks of 1962—

A. Yes, sir.

Q. The gross earnings are \$50,100 per day; is that correct?

A. Yes, sir.

Q. That's before taxes?

A. Basically this figure is the end product on the balance sheet, except taxes.

Q. It is before taxes?

A. Yes, sir. Profit and loss statement.

Q. So that what the first line of this exhibit shows is that the first day of the strike, assuming it occurred upon an average day, the company would lose in combined expenses and loss of earnings, \$96,700?

A. Yes, sir.

Q. Now, is that figure for the first day subject to fluctuation, depending on whether it is at the beginning or the end of the week?



A. Yes, sir.

Q. Because the heaviest shopping days are Thursday, Friday and Saturday?

431 A. Yes, sir.

Q. But spread over seven days so that you would get in a 7-day period, the accumulative total that you show there at the end of the seventh day, \$677,200, is a reasonably accurate estimate?

A. Yes, sir.

Q. Now, what assumption did you make with respect to what would happen to the perishable produce, or is it possible to make a completely valid assumption?

432 A. I had gone into great detail breaking down the perishables into dairy products, meat items, delicatessen items, produce items, and because of the perishability of these items, which I had estimated, I found that it was really difficult to find out how much of these dollars we would lose, so I have excluded them from the study.

Basically, about all that could happen is that they would increase these figures.

In other words, if we could keep the store open for another two or three days it is conceivable that you could spend less money by keeping, say, possibly the grocery people on hand and you could possibly minimize the possible additional loss of perishables, which I found very difficult to fairly estimate. There is a lot of conjecture in this factor.

Mr. Christensen: If it please the Court, I offer the exhibit in evidence, and with this caveat to it or admission from it, that is impossible to make a completely accurate prediction, accountingwise, of a strike that has never  
433 occurred, because there are many variables in the situation, and no one can tell in advance precisely what conditions will be or precisely what the losses will be.

But we offer this as reasonable estimate that any man might make, and it is offered not to prove that it is precisely correct accountingwise, but to support our allegation that the threat of a strike that would shut down this chain, with competitors operating, is a very substantial threat, and to show why it is we feared that threat.

The Court: Do I understand that the loss you estimate of loss attributable to the perishables is not included?

The Witness: That's right, sir.

The Court: (Continuing.) Because of the difficulty in estimating—

The Witness: Yes, sir.

The Court: (Continuing.) What it would amount to?

434 The Witness: Yes, sir.

The Court: So it is not included?

The Witness: That is correct.

Mr. Dunau: May I have the witness for a few moments on voire dire, your Honor?

The Court: Yes.

*Recross Examination by Mr. Dunau.*

Q. Mr. Brodnicki, on the 7th day you show a loss of sales of \$1,108,000, correct?

A. That's right.

Q. Why did you increase it by \$1,000 over the 6th day?

A. To tie back to the average of 36 weeks. I had to—it is primarily an accounting technique, to, if you were to add down these seven figures, it would add down to the week's average. I probably would have been more accurate to spread it in.

Q. Mr. Brodnicki, either the first day or 7th day is going to be a Sunday, isn't it?

A. It is hard to tell which one of these days would  
435 be a Sunday.

Q. But you can't count seven days loss on sales. You don't have any sales on Sunday to speak of, do you?

A. We have the two stores open on Sunday. But I think the problem in developing such a tool is the fact that you don't know which of the seven days was a Sunday, and these figures are actually low—I have taken a full week which had \$7,750,000 of sales, and I have divided it by seven. So actually these figures are spread over seven days, and I think you agree they wouldn't happen evenly over those days.

Q. Well, they couldn't happen at all on Sunday, could they?

Mr. Christensen: The store is open on Sunday.

By Mr. Dunau:

Q. That couldn't happen at all on Sunday, could they, Mr. Brodnicki?

A. Yes, we could have a loss of sales.

Q. You couldn't have \$1,107,000 loss of sales on Sunday, could you?

436 A. No, sir.

Q. How many stores do you have open on Sunday?

A. I couldn't say. I could estimate.

Q. Well, estimate, then.

A. Fifteen.

Q. Fifteen stores open on Sunday. And what are their sales on Sunday?

A. I wouldn't know.

437 Q. You have also indicated a loss of earnings before taxes of \$50,100, correct?

A. Yes, sir.

Q. What is your tax rate?

A. Approximately 52 per cent.

Q. So we reduce that by 52 per cent, don't we?

A. This is a hard thing to—generally most of the work

we do for any decision would be before taxes, and it is "which comes first, the chicken or the egg" on these things.

Q. Well, you are not going to lose \$50,100 on earnings if 52 per cent of that is going to go on taxes, anyway, are you? You are not going to pay taxes on earnings you haven't made?

A. It is a—this comes up in many accounting questions, not only this one but other firms, which figure to use, I might mention.

Q. Well, if you try to figure how much money you are losing, you can't be losing money that you are not going to be giving away. If you were earning \$50,100 on that first figure you would be giving 52 per cent to the Government, wouldn't you?

A. I would agree that you could support the other view, yes, sir.

438 Q. Well, how could you support any other view, Mr. Brodnicki?

A. In this instance possibly a \$25,000 figure, for the sake of this estimate, would probably be more accurate. I think I tend to agree.

Q. Yes, you would agree, Mr. Brodnicki, you would have to reduce your loss of earnings by the 52 per cent you were going to give to the Government, in any event.

You indicated under "other losses", one, that there were certain losses that you could not estimate because they were perishables. Are you familiar with the fact that ordinarily a Union gives some advance notice of a strike?

Mr. Christensen: I will object to that.

The Court: Oh, I think that is proper. Overruled.

By Mr. Dunau:

Q. Are you familiar with that, sir?

A. From my understanding I think there are—from my knowledge of it I think there are degrees, from what I have heard, so you might have a complete shut-down

439 or notice; I think there is a variety of situation which could transpire.

Q. If you were to be given three days notice of a strike couldn't you take care of your perishables?

A. I am sure you could minimize your losses.

Q. So the assumption is that the Union won't give you an advance notice of a strike?

A. This is primarily why I put it in a footnote. It depends on the amount of notice, which is purely conjectural.

Q. Now, your second footnote is purely hearsay, is it not, sir?

A. Merchandisers have told me that this is true, which probably is.

Q. Opinions, just hearsay, you don't know about it yourself?

A. I have seen a lot of—I have read about things of this sort in the paper, whether they affect our industry or other industries, and this does seem to be a common trend, from what I have seen. I couldn't specifically give you statistics, but I have read of this in various things.  
440 I would hate to have you pin me down to what. I have probably seen a half dozen notes of one sort or another making similar type statements.

Q. You are basing this footnote two, then, what you read elsewhere and on what people told you?

A. Common knowledge, I guess.

Q. How many years have you been with Jewel Tea?

A. Nine years.

Q. Has Jewel Tea ever experienced a strike?

A. I think we have had some degrees of strikes, picketing and things.

Q. Where, sir?

A. I would hate to say for sure, but I believe it was in the Indiana area.



Q. And did you make an inquiry to determine whether after the strike in the Indiana area you had lost the customers that you had before the strike?

A. Yes.

Q. And did you lose the customers?

A. Yes, sir.

Q. Whom did you inquire of, sir?

A. I believe there was a Mr. Kozentina or a Mr.

441 Ilika.

Q. And who were they?

A. Division managers who were over those stores at the time.

Q. What did they tell you?

A. I don't believe I can recall the discussions well enough, except that the factors which were in existence outside the stores did deter people from coming into our stores and it did have an effect on the sales thereafter. I couldn't quote statistics or percentages now.

447 By Mr. Christensen:

Q. Now, Mr. Witness, did you prepare a computation as to the loss of earnings that Jewel has suffered from the last half of 1953, to date, because it has been unable to sell meat, save in 33 of its stores?

A. Yes, sir.

Q. Will you please place that document before you, sir?

A. Yes.

448 By Mr. Christensen:

Q. You are now looking at Plaintiff's Exhibit No. 16, headed "Loss of Profit because Jewel was unable to sell meat at night except in 33 stores", is that not correct?

A. Yes, sir.



Q. The first column is, headed "Store Address," and then follows a list of stores. Why are those stores listed?

A. I excluded the earnings from the study of those stores which had the privilege or that were selling meat at night, let us say. In fact, I have shown the earnings of the stores by years in an attempt to exclude them from the total company's performance.

Q. Your first total figure shows the total annual earnings of stores selling meat at night in each of the various accounting periods referred to in the heading, is that not correct, of this sheet?

A. Yes, sir.

Q. And your next crosswise column bears the caption "Total Company Earnings," and you show—

449 Q. Now, from what source did you derive that figure of \$2,574,912?

A. The two million—I am sorry, I didn't get that.

Q. Following the caption "Total Company Earnings" appears \$2,574,912.

A. This figure came from the company records, which is a summation of all stores.

Q. What does that figure represent?

A. The total earnings from all of the stores that were open during that period of time prior to the last half of 1953.

Q. Now, each of the other figures then across that line give the same information, coming from the same stores?

A. Yes, sir, in each case, except the last one refers to—that is for the full year.

450 Q. They are for the periods indicated at the top of the sheet?

A. Yes.

Q. Now, your final column, your final line, as I read it,

says "Total Annual Earnings of Stores not selling meat at night" and the first figure is \$2,561,714.

A. Yes.

Q. How did you arrive at that figure?

A. This was including the stores selling meat at night out of the company's performance.

Q. That is deducting the 13,198 from the two million five?

A. Yes.

Q. And are each of the other figures shown in that last line similarly prepared?

A. Yes, sir.

Q. By deducting the earnings of stores selling meat at night from the total company earnings?

A. That is correct.

Q. Now, will you explain to the Court how you arrived at your written statement "Damages to Jewel by not being allowed to sell meat at night", \$110,940,000, the 15.451 per cent equals \$17,084,814, and will you explain that calculation to the Court?

A. Well, the \$110,000,000 figure is the earnings for this time period covered of all of our stores excluding those that were able to sell meat at night, as indicated above, and the 15.4 per cent is the figure which we developed from the study, which I had explained this morning, showing the effect on our nine-store survey, and multiplying that ratio times the \$110,000,000 of profit, you come up with the effect of what—the effect of what it may have had on the nine stores related to the Jewel Company during those years covered.

Q. Now, Mr. Witness, I place it upon the easel, Plaintiff's Exhibit 13, and I do not see on there any figure of 15.4 per cent.

Will you explain how you derive the 15.4 per cent from that?

A. That is a comparison of the company's figure on the bottom.

Q. Will you please step over there and point it out with your finger?

A. Down there, as I explained before, the company 452 had a 7.7 per cent increase in the before and after situation, and these nine stores, in the before and after situation, had a 23.1 per cent increase, and the 15.4 per cent is merely subtraction of the two to find out what effect this would have had on the company.

Q. Now, are there any reasonable or likely adjustments that can or should be made in that \$17,000,000 projection, either upward or downward?

A. I saw one problem which you mentioned.

This is based on an assumption that all of our stores would take advantage of selling meat at night, and I found out later, through the man who has headed up the meat operations, that there are probably about 16 stores which, because of their small size, would not at least one night a week sell meat at night, and so I took the volume of the 16 stores and related it to the company's performance, and found that for the year 1961 that it was 2 per cent of the total, so that these figures should be discounted by approximately 2 per cent, assuming that these stores would not have the advantage of this increase of selling meat at night.

453 Q. If you discount the \$17,084,814 by 2 per cent, what would your figure be?

A. \$16,700,000.

Mr. Christensen: I will offer the exhibit into evidence.

Mr. Dunau: May I have the witness, your Honor?

The Court: Yes.

*Recross Examination by Mr. Dunau.*

Q. Mr. Brodnicki, looking at 950 Aurora, which is the thirteenth store from the top of the listing.

A. Yes, sir.

Q. It says "This store was opened on June 17, 1954, and started selling meat at night on January 1, 1958", and you have excluded from your computation its sales for 1953 to 1956, have you not?

A. Did you say sales?

Q. Yes, have you excluded—I am sorry, your earnings for that period?

A. Yes, sir.

Q. You have excluded the earnings?

A. Yes.

454 Q. What is the assumption upon which you base that exclusion of earnings?

A. That store did not sell meat at night.

455 Q. Do you know whether you were free to—whether Jewel Tea was free to sell meats at night at that time?

A. All I know is they didn't, to the best of my knowledge, sell meat at night.

Q. Well, they didn't, but does that add up to a didn't which is attributable to any lack of—any prohibition upon selling meat at night?

A. I don't understand.

Q. Isn't it entirely possible that Jewel Tea for that period just did not choose to open the store at night?

A. I think you would have to ask somebody other than myself for that answer.

456 Q. Mr. Brodnicki, look at 515 Geneva store, which was open on April 1, 1954, and which began selling meat at night on January 1, 1958.

A. Yes, sir!

Q. You have excluded the earnings of that store for the period between 1954 and '58, is that correct?

A. Yes, sir.

Q. Do you know whether, during that period of time, there was an agreement in effect which prohibited Jewel Tea Company from selling meats at night?

A. I do not know the exact nature of anything that prohibited us from selling meat.

Q. The answer is, you do not know?

A. I do not know specifically.

Q. Look at 368-Elgin store, sir, which is the seventh from the top, which was opened on March 25, 1954, and which started selling meat on January 1, 1958.

457 Q. Do you know of any agreement with a Local Union who is a defendant in this case which, for that period of time, prohibited Jewel Tea from opening those stores at night, if it chose to?

A. I am afraid it would have to be the same answer.

Q. You do not know, is that correct?

A. I am not specifically sure.

Q. Mr. Brodnicki, you used a figure of 15.4 per cent, which you now have reduced, as I understand it, to 13.4 per cent as the basis upon which you are determining the loss to Jewel Tea from not operating nights in the Chicago area, is that correct?

Mr. Christensen: I object to the question. The witness did not testify that he reduced 15.2 per cent to 13 per cent.

Mr. Dunau: I thought he said—

By Mr. Dunau:

Q. Would you tell me what you reduced the 15.4 per cent by?

A. I didn't reduce that figure at all.

Q. Did you say, Mr. Brodnicki, that the \$17,084,814 figure should be reduced to \$16,700,000?



458 A. Yes, sir.

Q. On what basis did you make that deduction?

A. On the opinion of a man who heads up this part of the operation who felt that we probably wouldn't take advantage of the night openings in one hundred per cent of our stores, that there would be a very few small stores which would very possibly be excluded.

It amounted to—the volume of these stores amounted to 2 per cent of the seventeen million.

459 Q. It amounted to two per cent, is that correct? Is that what you told me?

A. Yes, sir.

Mr. Christensen: Of company volume, which is different from two per cent taken from a 15 per cent differential.

By Mr. Dunau:

Q. Mr. Brodnicki, the 15.4 per cent you got was from subtracting 7.7 from 23.1, as it appears on Plaintiff's Exhibit 13, is that correct?

A. Yes, sir.

Q. And using 23.1 per cent, are you assuming that the entire increase in the profit for those nine stores is attributable to night opening?

A. I feel there are a lot of factors, and this was a fair before and after situation in which this factor was underlying in each of them, and it was a basis for a judgment.

Q. Mr. Brodnicki, taking that 23.1 per cent, as I understand you, night-operating hours is one factor which  
460 goes to make up the 23.1 per cent, is that right?

A. Not in the sense you have worded it now. This is a summation of these stores, and in the summation I think this one factor which is more common to all of them, now tends to be the measurable difference. It tends to differ from taking an individual store and now taking the group as a total.

Q. Mr. Brodnicki, 23.1 per cent represents the increase,



does it not, of the total store earnings from \$1,315 to \$1,618, for these nine stores, is that correct?

A. Yes, sir.

Q. And you are assuming that the entire increase from \$1,315 to \$1,618 is due to an expansion of marketing hours, are you not, sir?

462 A. I would say that in taking the total of the stores, that because each of these stores has this underlying effect, that this bottom figure of 23.1 per cent is a much better measurable figure of the effect of this one particular factor, which was common to each of the stores.

463 Q. Is your answer yes or no, Mr. Brodnicki?

A. That would be difficult to answer, specifically, yes or no.

Q. Well, are you or are you not assuming that the whole increase is attributable to an expansion of marketing hours?

A. I would say that it is a—I wouldn't necessarily say—it could be more or less, but on the average now, it is a—

Q. Please, yes or no? Are you assuming that it is all attributable to marketing hours, or are you not assuming that?

A. I would have difficulty answering that question without qualifying it. I couldn't say a definite yes or no.

Q. You know, do you not, Mr. Brodnicki, whether  
464 you have assumed it is all attributable to marketing hours or it is not? You have to make one or the other of the two assumptions there is no inbetween.

Now, did you assume it was all attributable to marketing hours, or did you not?

A. I don't mean to be evasive, but if you will let me give you the answer without a yes or no, maybe I could—

Q. Would you please give me yes or no, and then you

can explain it, so far as I am concerned, as much as you please.

A. On the average of the nine stores, I would say the 23.1 per cent tends to point out what effect this night operation had on sales of meat.

Q. Mr. Brodnicki, are you or are you not attributing the whole of that 23.1 per cent to an expansion of operating hours? Yes or no.

A. The answer is a conditional yes.

465 Q. What does "a conditional yes" mean?

A. With the qualification I have offered.

Q. What is the qualification you have offered?

A. I have said it several times.

Q. Would you please state it again, then?

A. In my judgment that if you were to take nine stores and compare them in the one year previous to a change and the one year after a change, that if you were to compare various indicatives which made up their operating performance, and that if you were to then average their performance, that the underlying net effect would show you the effect of what this one underlying factor is in most part.

Q. Mr. Brodnicki, let's see if we cannot get at it another way.

As to any one individual store, are you prepared to say that market operating hours are only one factor which would contribute to an increase in volume to sales?

A. Yes.

Q. As to any one store marketing operating hours are only one factor, correct?

466 A. That's correct.

Q. What are the other factors as to any one store?

A. Competition, our promotions at the time, our management, our people, probably chance. There are many, many underlying factors which could affect the sales of a store.

Q. All right.

Now, when you multiply one store by nine stores, do these other variables disappear from the picture?

A. No, sir.

Q. So you must take into account all the variables you have just listed in determining whether an increase in volume is attributable to market operating hours or to market operating hours plus something else, is that correct?

467 A. Yes, and they would tend to net themselves out when you take an average.

By Mr. Dunau:

Q. Br. Brodnicki, 23.1 per cent would then indicate an expansion of market operating hours, competition, better people, efficiency, chance, is that correct?

A. I cannot answer that the way you phrase it,

468 Q. Mr. Brodnicki, let's try it once more:

Does 23.1 per cent increase include factors in addition to market operating hours?

A. Yes, sir.

470 [Session of Friday, October 26, 1962.]

Q. Mr. Brodnicki, at the conclusion of this session yesterday, we had these questions and answers, and I will repeat them to you so we can take up from there:

"Q. Mr. Brodnicki, let's try it once more. Does 23.1 per cent increase include factors in addition to market operating hours?

"A. Yes, sir.

"Q. It does?

"A. Yes, sir."

Mr. Brodnicki, since factors in addition to market operat-

ing hours are included in the figure 23.1 per cent, 471 how do you determine how much of that 23.1 per cent should be attributed to marketing hours and how much to other factors?

A. By comparing the performance of these stores which have the granted privilege, take advantage of the privilege of selling meat at night, and by determining before and after performance, it is possible to compare this performance with the company performance, which excluded this privilege; and the difference between the two figures of 15.4 per cent would be the effect of selling meat at night as to how it would benefit earnings.

Mr. Christensen: I don't understand that, the difference between which two figures?

The Witness: The difference between 23.1 per cent, the increase of these nine stores, compared to the company performance of 7.7, would be the effect of this performance on earnings.

Mr. Christensen: You are referring to the last figures at the foot of Plaintiff's Exhibit 13?

472 The Witness: Yes, sir.

By Mr. Dunau:

Q. You are stating, then, Mr. Brodnicki, that all other factors you would account for by giving them a value of 7.7 per cent?

A. Yes, sir.

Q. The Michigan City store, which is Item A-4, now company Exhibit 13-H, shows an increase of 110.3 per cent; is that correct, sir?

A. Yes, sir.

474 Q. Does the Michigan City store show a 110.3 per cent increase in the year of operations after the expansion of marketing hours?

A. Yes, sir.

Q. Do you deduct from 110.3 per cent, sir, 7.7 per cent?

A. I don't understand what you mean.

Q. Is this 7.7 per cent of the 110.3 per cent attributable to factors other than market-operating hours?

A. I haven't done that on this work sheet that way.

Q. Is that the premise upon which the study was based?

A. No, sir.

Q. How do you determine, of this 110.3 per cent, how much is attributable to market-operating hours and how much to other factors?

476 A. Well, I think it actually depends on the people in that community, and how receptive they were to this proposition. It could be a figure of 15.4 per cent, or it could be a figure above or below in that situation.

There are other factors operating which can affect the earnings of the store, and to the extent as to what the specific figure in the store is, I could not state.

477 Q. Is your answer then, sir, as to the Michigan City store, that you do not know how much of the 110.3 per cent is attributable to marketing hours, and how much to other factors?

A. I would say that it would be difficult to pin-point the precise percentage.

Q. Is your answer that you do not know, sir?

A. I do not know the precise figure.

Q. And you would not know how much is attributable to marketing hours, and how much is attributable to other factors in every one of the other eight stores in the group that that covers, is that correct?

A. No, sir.

Q. That is not correct or that you do not know?

A. Would you restate that again.

Q. As to each of the other eight stores, do you know

how much of the increase is attributable to marketing hours, and how much to other factors?

A. In my judgment, I would say that of each of the stores there was in effect 15 per cent, plus or minus, you see, a few degrees operating on each of the balance of those stores, plus other factors.

478 Q. Would you look at your Item A-2, Mr. Brodnicki, the 341-Joliet store?

A. Yes, sir.

Q. Does that show a 61.8 per cent increase in earnings in the year after the market-operating hours at night were expanded?

A. Yes, sir.

Q. How much of that 61.8 per cent is attributable to market-operating hours, and how much to other factors?

A. I couldn't say, precisely.

Q. If I went through each of the stores, your answer would be "I couldn't say precisely," is that correct?

A. I could venture a judgment prediction.

Q. You could venture a guess?

A. Yes, sir.

Q. Thank you.

A. I didn't say "guess," I don't believe, sir.

Q. Is it a guess?

A. No, sir.

Q. What is it based on?

A. My judgment.

479 Q. What is your judgment based on?

A. The findings of the study.

Q. Of the study?

A. Yes, sir.

Q. Mr. Brodnicki, there are thirty-three stores in which night operation is permitted, is that correct?

A. Yes, sir.

Q. Nine stores you were able to find in which there was an expansion of night-operating hours, is that correct?



A. Yes, sir.

Q. Twenty-four stores, then, had no expansion of night-operating hours?

A. That is correct.

Q. But they had night-operating hours?

A. That is correct.

Q. Did you make a study to determine in those twenty-four stores whether any store had an increase in, during any of the periods that you have covered in your study, of 110 per cent?

A. I have seen some figures of the other stores, 480 and I cannot recall the specific performance as to what they did over a period of time. I couldn't quote them precisely.

Q. Do you recall—

A. I know some went up and some went down.

Q. Mr. Brodnicki, in the stores in which there are 481 not night operations, did you make a study of the increase in earnings in individual stores on that group?

A. This would be the balance of the company, other than the thirty-three?

Q. That's correct, sir.

A. It was primarily done in total, the total performance. I didn't get involved in individual stores for this purpose.

495 Q. Mr. Brodnicki, on Plaintiff's Exhibit 16 for identification, which is this document which purports to state the extent of the losses, will you take a look at it, please?

A. Yes, sir.

Q. You have the figure 15.4 per cent with an "A" encircled above the figure, is that correct?

A. Yes, sir.

Q. Then you have an "A" encircled on two lines below that line, is that correct?

A. Yes, sir.

Q. And then you say the 15.6 rate was obtained, is that correct?

A. It should have been 15.4.

Q. That is a mistake then? That should have been 15.4?

496 A. Yes, sir, that should be the same figure.

Q. Mr. Brodnicki, on total company earnings, which you have as \$116,000,000 plus dollars, is that before or after taxes?

A. Before taxes.

497 By Mr. Christensen:

Q. You were asked upon the examination just concluded as to whether in preparing Exhibit 13, which shows the 15.4 variation, or yields the 15.4 variation, you took into account in the nine stores the fact that meat prices might have gone up or that operating—that wages might have gone up or down in the nine stores, and you answered that you did not take into account or separately evaluate those items?

A. That's correct.

Q. Now, in showing the company comparable figures for the company, did you take into account in determining these percentages in the company performance whether wages had gone up or prices had gone up?

A. No, sir.

Q. So that whatever variation in prices or expenses there may have been are reflected both companywide and in the nine store area?

A. That is correct.

498 Q. Now, with respect to Exhibit 16, in showing the periods, the Exhibit shows you were asked as to whether store Aurora 15, 368-Elgin, 515-Geneva, and 950-Aurora, in which you did not exclude the earnings of those stores in the years '54, '55, and '56, whether night sale of meat was permitted in those particular stores. You were asked questions to that general effect yesterday. Do you recall that?

A. Yes, I do.

499 Q. According to company records and information relied upon, in the usual course of business, were you permitted, under your union contract, to sell meat at those stores at night during those periods?

A. No, sir.

500 *Recross Examination by Mr. Dunau.*

Q. Mr. Brodnieki, with respect to the four stores 501 that Mr. Christensen asked you about, you said you have read the union agreements for the period.

A. I have looked at considerable agreements, and I believe I specifically saw this in writing, but I base my judgment as to the way—for this particular work sheet, rather, upon the judgment I received from Mr. Vorbeck.

He had read the contract and explained to me that our stores were prohibited from selling meat during—that in our contract our stores were prohibited from selling meat during these time periods.

Q. And you did not read the agreement yourself?

A. I could not recall specifically whether I saw this one, or not.

Q. Then your basis, for excluding the earnings for those stores, is on what Mr. Vorbeck told you, is that it?

A. I would say primarily—well, I would say yes.

502 EDWARD T. VORBECK, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name, sir?

A. My name is Edward T. Vorbeck.

Q. Where do you live, Mr. Vorbeck?

A. 512 Dundee Avenue, Barrington, Illinois.

503 Q. What is your position with the Jewel Tea Company?

A. General attorney and assistant secretary.

Q. Are you the same Vorbeck whose name has been mentioned from time to time during this testimony in conducting labor negotiations for the Jewel Company the last several years?

A. I am.

Q. Were you personally familiar with whether you were able to sell meat at night in Aurora, Elgin and Geneva, sir, in the years 1953, 1954, 1956 and 1957?

A. Yes, sir, I am.

Q. What is the fact as to whether, under the contracts that you had negotiated and then in effect, that you could sell meat at night in those stores?

A. They were not permitted to sell any fresh meats at all after 6:00 p. m. in any of those stores prior to the conclusion of the 1957 negotiations.

Q. Which came near the end of the year 1957?

A. That is correct.

504

*Cross-Examination by Mr. Dunau.*

Q. Mr. Vorbeck, let's take the 368 Elgin store.

A. All right.

Q. What collective bargaining agreement was in effect covering the 368 Elgin store?

A. The collective bargaining agreement of Local Union 189.

Q. In what group?

A. Prior to the conclusion of the 1957 negotiations, they were in what was known, I believe, as Group 1, where night operations or the night sale of meats were not permitted.

Q. And what happened in the '57 negotiations?

A. The 1957 negotiations concluded with a setting apart of all of Kane County as a new group, 1-A, in which night sale of meat was permitted.

505 Q. 515-Geneva, sir, what agreement covers the 515-Geneva store?

A. That of Local 189.

Q. And what you have said with respect to 368-Joliet, does that apply also to 515-Geneva?

A. That is correct.

Q. The 950-Aurora store, what collective bargaining agreement covers that store?

A. Local 189.

Q. All the same answers that you have given to 950-Aurora, sir?

A. 950-Aurora?

Q. Yes, sir.

A. Yes, they are.

506 JACK R. WILLIAMS, a witness called on behalf of the plaintiff herein, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you state your name for the record, please?

A. Jack R. Williams.

Q. Where do you live, Mr. Williams?

A. 1011 Cherry Street.

Q. Do you work for the Jewel Tea Company?

A. Yes, I do.

Q. 1011 Cherry Street, and I forgot to ask you what town?

A. That's Hammond.

Q. Hammond, Indiana?

A. Yes, sir.

Q. How long have you worked for Jewel?

A. Approximately six years, part time and full time.

Q. What is your present position?

507 A. I am the Assistant Manager or Night Manager at 7240 Calumet, Hammond.

Q. When do you normally come on duty, what time of day?

A. One-thirty.

Q. In the afternoon?

A. Yes.

Q. And you remain at the store until what hour?

A. Eleven o'clock.

Q. What is the fact as to whether meat, fresh meat, is sold from your self-service counters in your store Monday, Tuesday and Wednesday nights without any butcher being in attendance?

A. This is true.

Q. That is true, is it not?

A. Yes.



Q. From six o'clock on, you are in charge of the entire operation of the store, are you?

508 A. Yes.

Q. Have you made an observation as to the ratio or proportion of meat sales with reference to grocery sales in your store before six o'clock and after six o'clock on these evenings, during which no butcher is in attendance?

A. Yes, I have.

Q. And in general do those ratios remain the same, or do they vary?

A. In most instances they remain the same. Sometimes it is a little higher, sometimes a little lower.

Q. Will you tell the Court what the condition of the self-service cases are at the end of the evening with respect to cleanliness or whether they are in disorder, or do you have any trouble with respect to the vending of meat from self-service cases without a butcher in attendance?

A. I have never had any problems with customers, as far as meat that is on hand.

As far as the cleanliness, I believe it is the same as during the day.

As far as the order, I believe it also would be the same as during the day.

509 Q. That is your observation?

A. Yes, sir.

Q. And how long have you been the Night Manager in this store?

A. Almost a year at this one.

*Cross-Examination by Mr. Dunau.*

Q. Mr. Williams, how many nights a week does the meat department operate in the store that you presently supervise?

A. Six nights.

Q. Do you have a butcher on duty on Thursday night?

A. Yes.

Q. How many?

A. One.

Q. Friday night; how many?

A. One, and sometimes two, I believe.

510 Q. Saturday night?

A. None.

Q. None on Saturday night?

A. No.

Q. Do you inspect the cases during the course—the counters in the Meat Department during the time that a butcher is not on duty?

A. Yes.

Q. Do you, if you see a package in a wrong place, pick it up and put it in the right place?

A. I don't believe I have ever found it necessary.

Q. You mean in your experience a housewife who has picked up a package of hamburger has never put it down in the place where a package of steak is normally kept?

A. Not that I could recall.

Q. And in your experience a housewife who has picked up a poultry package has never put it back any place but the place you keep poultry, is that correct?

A. Not that I can recall.

511 Q. They always put it back in the same place they pick it up, is that it?

A. I believe the customers are very good about that.

Q. And the package is never torn, is it, sir, between six and nine when a butcher is not on duty?

A. I couldn't say definitely; not that I have—

Q. You have never seen a package torn, is that correct?

A. I do not believe so.

Q. You don't believe you have ever seen a package torn, is that right?

A. No.

Q. You have never seen a package torn?

A. No.

Q. And you have never run out of a particular variety of meat between six and nine, when a butcher is not on duty?

A. That I cannot say. If we have, that's never 512 been brought to my attention.

Q. And you, personally, have never gone into a cooler between six and nine and replenished the stock in the cases by taking out a piece of meat that was in the cooler and putting it in the counter, is that right?

A. Right.

513 ROY McKNIGHT, called as a witness on behalf of the plaintiff herein, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your name for the record?

A. Roy McKnight.

Q. Where do you live, Mr. McKnight?

A. 3527 43rd Place, Highland.

Q. Highland?

A. Pardon?

Q. I did not get the place.

A. Highland, Indiana.

Q. Highland, Indiana?

A. Yes.

Q. You are employed by the Jewel Tea Company, are you not?

A. Right.

Q. In what capacity?

A. Assistant Manager or night Manager.

Q. In what store?

A. Just this week I was transferred to Hobart,  
514 661 Hobart.

Q. Before this week where did you work?

A. 4501 5th Avenue, Gary.

Q. 4501 5th Avenue, Gary, Indiana?

A. Right.

Q. And you were there how long?

A. Roughly, two and a half years.

Q. Is that store open for the sale of meat at night?

A. Right.

Q. From self-service counters?

A. Right.

Q. What is the fact as to whether in that store you  
have a butcher in attendance—had a butcher in attendance  
each night the store was open?

A. I don't quite understand.

Q. Well, did you have a butcher in attendance every  
night the store was open for the sale of meat?

A. No.

Q. Which nights did you have butchers in attendance?

A. Thursday and Friday.

Q. And it was open how many nights?

515 A. Every night; six nights.

Q. Six nights?

A. Yes.

Q. Every night except Sunday?

A. Right.

Q. Did you, during the time you were in that store  
on these—you were there nearly every night, I take it?

A. Five nights a week.

Q. And that would include the nights when no butchers  
were there?

A. All the nights the butchers weren't there.

Q. Did you ever receive any complaints from customers

as to the service—over the condition of the meat tables or self-service counters?

A. No, not that I recall.

Q. State in general what you observed the condition of those meat self-service counters to be with respect to cleanliness and availability of meat products during the nights butchers were not in attendance?

A. What I could see, good.

Q. Now, in that store, the Gary store, was there 516 any appreciable variance between the ratio of meat sales to grocery sales in the daytime, as opposed to the nighttime when butchers were not in attendance?

A. No. It would just fluctuate within one or two percentage points, either up or down.

*Cross-Examination by Mr. Dunau.*

Q. How many butchers are on duty Thursday night?

A. One.

Q. Friday night?

A. One, I believe.

Q. Have you ever cleaned the meat counter on nights that a butcher was not on duty?

A. No.

Q. Have you ever found a package of meat where the cellophane was broken?

A. No.

Q. Have you ever found that the—that a housewife took a package of hamburger, picked it up, didn't want it 517 and put it down in the place where the steaks should be?

A. I don't believe so.

Q. You have never found a housewife who picked up a poultry package, didn't want it and put it down where

the steaks should be, or some other place where it shouldn't be?

A. No.

519 KENNETH D. SMITH, a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your name?

A. Kenneth D. Smith.

Q. Where do you live, Mr. Smith?

A. Batavia, Illinois.

Q. Are you an employee of the Jewel Tea Company?

A. Yes, sir.

Q. Are you a member of the Amalgamated Meat Cutters and Butchers Workmen of North America?

A. Yes, sir.

Q. What local?

A. 189.

Q. And you work as a butcher for Jewel?

A. Yes, sir.

Q. In what store?

A. 515-Genova.

Q. Do you have any objection to working nights, so long as you are paid time and a half?

520 A. No, sir.

Mr. Christensen: You may cross-examine.

Mr. Dunau: No questions.

The Court: That's all.

(Witness excused.)

Mr. Christensen: Your Honor, I have here under subpoena ten additional butchers, members of either Local 189 or the local that covers the Hammond, Indiana, area.



All of them, I believe, are prepared to give the identical testimony.

In view of counsel's failure to cross-examine the gentleman we just had on the stand, I wonder if you would stipulate with me that if they were called, they would give testimony identical or closely similar to that of the last witness, Mr. Smith?

Mr. Dunau: May we consider that for a moment, your Honor, and may we have the identification of the persons that you would call?

Mr. Christensen: Here you are.

Mr. Dunau: Mr. Christensen, if you will identify the name of each of the persons and the location of the 521 store in which they work, we will stipulate that if they were called as witnesses, they would testify in the same fashion as the individual who has just completed his testimony.

. . . . .

523 VERNE B. CHURCHILL, a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you state your full name?

A. Verne B. Churchill, Jr.

Q. Where do you live, Mr. Churchill?

A. 1035 Long Acre Road, Northbrook, Illinois.

Q. What education have you had?

A. What was the—my further education?

Q. Yes?

A. I have a Master's degree from Indiana University and a Bachelor's from Ripon College in Ripon, Wisconsin.

Q. A Bachelor's from Ripon?

A. Yes.

Q. And a Master's in what from Indiana University?

A. In business administration.

Q. By whom are you presently employed?

A. Market Facts, Incorporated.

Q. What is the business of Market Facts?

524 A. It is a market research company...

Q. Where is it located?

A. 100 South Wacker Drive, Chicago, Illinois.

Q. Will you describe briefly for the Court what a market research company does?

A. At the risk of over-simplification, a market research company is in the business of obtaining information which will lead to marketing decisions by manufacturers, advertising agencies, and other sponsors of research studies.

Q. How long have you been employed by Market Facts, Incorporated?

A. Over three years.

Q. Before that, by whom were you employed?

A. The Parker Pen Company, in their Research Department.

Q. In the Research Department?

A. Yes, sir.

Q. And what title do you bear presently with Market Facts?

A. Study Director.

525 Q. Study Director?

A. Yes.

Q. Were you requested by counsel for the Jewel Tea Company recently to ascertain facts with respect to shopping preferences and habits of consumers in the Chicago area with respect to the purchase of foods and meats?

A. Yes, with one exception.

At the time of the request, I was not aware of the fact that you were counsel for the Jewel Tea Company.

Q. But you were requested?

A. Yes.

526 Q. And did you in consultation with others in your organization work out the conditions for such a study?

A. Yes, sir.

Q. And was it conducted under your supervision?

A. Yes, sir.

Q. Is the Plaintiff's Exhibit 17 your report and evaluation on such a study?

A. Yes.

Q. Now, will you turn to the back of the—no, first will you please tell how you constructed or selected the sample, or I believe the term my esteemed and learned opposing counsel uses is the universe, which was to be sampled?

A. We defined the universe to be sampled as the telephone-owning homemakers in Chicago and in immediately surrounding suburban communities.

527 Q. Did you make a decision as to approximately how many to sample in Chicago and how many to sample in the surrounding communities?

A. Yes.

Q. And how did you determine how you would divide it between Chicago and the surrounding area?

A. Quotas were assigned essentially proportionate to the distribution of population in Chicago as against its surrounding communities. That is, roughly, 50-50. This was the quota assignment. The actual result composition was 54.5 per cent of the respondents were located within the city limits of Chicago or sampled from the Chicago directory; 45.5 per cent sampled from non-Chicago directories.

This—if I may make another point.

Q. Go ahead.

A. According to the Census Department the distribution of Chicago v. the remainder of Cook County is about

60 per cent in Chicago and 40 per cent for the suburban communities outside of Chicago in Cook County. This is approximately the distribution within one per cent, let's say.

528 Since we were concerned only with telephone-owning households, which, according to the Illinois Bell Telephone Company, telephone penetration is higher in suburban communities than in Chicago proper; in our judgment, the roughly 55-45 split between Chicago and the suburbs is a fairly accurate division of the sample in terms of telephone-owning homemakers in these two areas.

Q. All right. Now, how was the survey actually conducted?

A. Interviewers on a regular staff were recruited to perform the study. Seven of these interviewers were located in suburban communities outside of Chicago; seven were located within Chicago. Quotas were established to approximately 50-50 Chicago v. suburban.

These interviewers were phoned by our field department and asked if they were available to participate in this study.

Q. Was each interviewer furnished with a series of—what do you call these, questionnaires?

A. Questionnaires, that's right.

529 Q. (Continuing.) Questionnaires, that appear as an exhibit to your report.

A. Yes, each one was furnished with a number of questionnaires slightly in excess of the quota of completed interviews as well as written instructions, both in terms of the study in general and in terms of sampling of respondents, and a call record sheet.

Q. Were they given the written instructions that appear on the blue sheet in the exhibits to your—

A. Yes.

Q. (Continuing.) —report?

A. Yes, sir.

Q. And the document had its sampling instructions, which also appears as an exhibit to your report?

A. Yes, the sampling instructions differed slightly with each interviewer, according to the random selection of starting points in the directory used by that interviewer.

Q. Yes, but each one—

A. Had a blank, that's right.

Q. Had a different letter or a different place—

A. Yes.

530 Q. (Continuing.) —to start in the telephone book?

A. Yes.

Q. After the interviewers made their calls, what did they do?

A. When they completed their calls?

Q. After they completed their calls and filled out their questionnaires?

A. On Monday night and also on Tuesday night—that is October 22nd—and last Monday night and last Tuesday night they returned their questionnaires. The manner in which these were returned, we selected three or four interviewers located centrally among the group of interviewers, and then they all pooled their questionnaires.

Q. They collected them and brought them downtown?

A. That's right.

Q. And someone in your organization then tabulated the results?

A. Yes. The questionnaires were then numbered and submitted to key punch operations in the Hayes Statistical Service. These—the answers—the questionnaire was  
531 a completely structured one which did not require any coding, that is, any interpretation of answers on the part of our Coding Department. The answers were all self-evident and could be given right to a key punch operator.

The data were then punched on IBM cards, and returned to our office. The tabulation of these questionnaires, according to a tabulating plan I had developed, was accomplished through our IBM Department on Tuesday morning.

Q. That resulted in what page of your report?

A. Excuse me, that was on Wednesday morning.

Q. And what resulted in what page of your report?

A. That resulted in all of the pages numbered—table numbers 1 through 10, comprising eleven total pages in the report.

Q. And those pages are summarized in the summary of key findings?

A. Yes. From the data, excerpts of the data are taken from the tables and summarized on the page entitled, "Summary of Key Findings" and supplemented by other information—

Q. All right, just never mind.

532 Now, on your sheet, "Summary of Key Findings" appears a column headed, "Probable Minimum and Maximum Proportion in Population", and then figures that are spread figures, the first one being 60 to 72 per cent.

A. Yes, sir.

Q. Will you explain that in some detail as to just what you mean by "probable minimum and maximum proportion in population"?

533 A. The 60 to 72 per cent represents what can be considered the probable range of homemakers in the universe sampled who would answer—whose opinion would correspond to the item listed on the page. That is, the first item says: "Normally use automobile for shopping."

One of the first questions asked on the questionnaire was whether they normally use an automobile for their regular



food shopping. Sixty-six per cent of the 422 people in our sample said that they do normally use an automobile for shopping.

Now, those 422 people were sampled from a universe rather than every member of the universe being asked the question; at best the 66 per cent represents an estimate of what the true proportion is in the population. In the absence of a census, i.e., the asking of everybody in the universe of population, you have to work with a sample estimate.

Now, so long as you have got a randomly selected 534 sample, then the laws of probability can operate and you can then arrive at estimates with a 95 per cent level of confidence as to what the upper and lower limits would be in terms of the field of the entire population.

Therefore, we show that 66 per cent of the homemakers in our sample normally use an automobile for shopping. We can then say, because we had a good randomly selected sample, that at least 60 per cent of the homemakers, we can say with a 95 per cent level of confidence, that at least 60 per cent of the women in the universe sampled and possibly as many as 72 per cent of the women in the universe sampled normally use their automobile for shopping.

Is that an explanation of these two columns?

By Mr. Christensen:

Q. In other words, you are saying that the 66 per cent is probably not quite exact, but that as applied to the entire population an affirmative answer to that question will fall in the range between 60 and 72 per cent?

A. Yes.

535 Q. In your judgment as an expert opinion that is correct?

A. Yes.

Q. And the same holds true right down the page, does it not?

A. Yes.

Q. How many opinion surveys of this general nature have you participated in making in your business experience, Mr. Witness? Your best estimate.

A. 150.

Q. And it is the day to day business of your organization?

A. Yes. If it is of any enlightenment our clients—should I mention some of our clients?

Q. If you are at liberty to do so.

A. I think it will help.

Q. Just go ahead.

A. The Ford Motor Company, United States Steel Corporation, Dow Chemical Company, General Foods Corporation, All State Insurance Company, Wilson & Company, Meat Packers, Proctor & Gamble Company.

Q. All right. Have any of the major advertising 536 agencies employed the services of your organization in work of this general character?

A. Yes. As a matter of fact, right now I am working on jobs for Needham, Louis & Brorby, Tatham-Laird, and D'Arcy Advertising Co., here in Chicago.

Q. They are some of the largest advertising agencies in the nation, are they not?

A. Yes.

Mr. Christensen: I will offer the exhibit in evidence, if it please the Court.

*Cross-Examination by Mr. Dunau.*

Q. What is the universe covered by this city, Mr. Churchill?

A. Telephone-owning household, homemakers of the telephone-owning households located in Chicago and in suburban communities immediately surrounding Chicago.

537 Q. How many could that include?

A. Our estimate as to the number of households is 1,280,400.

538 Q. And you were using a survey of 422 people to determine the sentiments of 1,280,400 people, is that correct?

A. Yes, sir.

Q. What is considered a fair sampling of the universe, sir?

A. What do you mean by "fair"?

Q. In order to determine what the sentiments of 1,280,000 people are, how many people do you think you should interview?

A. It depends on what kind of area you want to cover.

Q. Well, let's relate it to the least tolerable area. How many people would you interview to get the maximum of—

A. (Interposing.) 1,280,000.

Q. Then, sir, since we cannot interview 1,280,000, you were asked, as the maker of the survey, to determine it in a feasible way what to do.

A. My original recommendation was 300 to 350, later modified to about 400.

Q. It is your position, then, by talking to 300 to 350 people, that you can find what the sentiments are of  
539 1,290,000 people, is that correct?

A. Within a predictable limit, yes.

Q. And you would not ordinarily use a sampling of more

than about 300 to 400 people in order to determine what 1,000,000's sentiments would be?

A. If I wanted to find out with a greater level of precision, then I would go to more, yes.

Q. But talking about an approximate level of precision, what would you use?

A. Well, you would have to define your term. What I am saying is that if I were—as I have done here, I have designed a study to answer a certain question.

I will recommend a sample size according to the amount of error you can tolerate. Now, the amount of error you can tolerate is the function of a number of things.

Getting back to the one field which we talked about before, we found that 66 per cent of the women said that they normally used an automobile for shopping.

I don't think it is terribly important whether it is actually 63.7 per cent, or whether it is actually 71.7 per cent.

540 I am satisfied, and I think that most marketers would be satisfied in a corresponding question in any marketing study. I think they would be satisfied whether it would be between 60 to 72 per cent who use their automobile for shopping.

Q. But you think you can find that out by asking 400 people in a population of 1,200,000?

A. Yes.

Q. Why did you confine it to the telephone-using public?

A. Because this was an expedient we had to make because the study had to be made in a relatively short time, and there was also a budgetary consideration.

Telephone interviews are handled much more quickly and faster, and for less money, than in personal interviews.

Q. Do people buy meat who do not use telephones?

A. Yes, or as far as I know, they do.

Q. You don't have any doubt about it, do you?

A. No.

Q. Then would the universe properly include, those that you were sampling at the time—it would include those who had telephones and those who did not have tele-  
541 phones?

A. If that were the universe I was sampling, yes. The universe that I sampled were telephoned and they were in households.

Q. But the universe that is relevant, is that universe that uses—

A. (Interposing.) Eighty per cent used telephones.

Q. When were you retained to make this study?

A. Friday, October 20. I believe that is correct—or the 19th.

Q. By whom were you retained?

A. Mr. George Christensen.

Q. Did Mr. Christensen identify to you the purpose for which this study was to be made?

A. He described in broad terms that there was—he, in words, or in substance, rather, told me that—my recollection is that he said that Jewel was involved in a lawsuit, in which they were attempting to be allowed to sell meat after 6:00 p m.

Q. So you knew, when you conducted this study, that it was to be used in a lawsuit in which Jewel sought  
542 to change the rule, as explained to you, as being presently in existence, is that correct?

A. Would you repeat your question?

Q. You knew, when you made the study, that it was going to be used in a lawsuit on behalf of Jewel, did you, in which they were going to try to change the rule in existence with respect to the sale of meat in Chicago?

A. I did not know it was going to be on behalf of Jewel.

Q. You knew that Mr. Christensen represented Jewel, did you not?

A. No.

Q. But you knew it was going to be used by somebody in the lawsuit?

A. Yes.

Q. And you knew that somebody was going to try to change the presently existing rule, did you not?

A. Yes.

Q. When did you start working on the study?

A. Immediately after the telephone call on Friday afternoon.

Q. When did you receive the telephone call on 543 Friday afternoon?

A. About 4:10 on Friday afternoon.

Q. How much time did you devote on Friday, after 4:10, to this study?

A. I would estimate four hours on Friday.

Q. And on Saturday, did you work?

A. Yes.

Q. How many hours did you work on Saturday?

A. I would estimate two hours on Saturday.

Q. That is six hours, and how many hours did you work on Sunday?

A. Approximately four hours on Sunday.

Q. That is ten hours, is that it?

A. That is approximately it, yes.

Q. And what did you do during those ten hours, sir?

A. Designed a questionnaire and consulted with my superior, David Hardin, about it.

Q. Then the shopping survey, the questionnaire, was composed by you within the space of ten hours, is that it?

A. By myself in consultation with my superior, in 544 roughly ten hours of work over a three-day period, yes.

Q. Who gave you the information which was the basis upon which you made this questionnaire?

A. Mr. Christensen.



Q. How long did you talk to Mr. Christensen?

A. Oh, I would estimate that I talked to him in one conversation approximately ten minutes, and then later on that evening, and then again on Friday, for five minutes.

Q. So on the basis of a fifteen-minute conversation, you made up this questionnaire?

A. Yes. Well, no, that is not correct.

On the basis of a fifteen-minute conversation I obtained what I considered to be sufficient knowledge of the issues involved, as far as I had to know them, and also arrived at an estimate of what the study would cost, and what other specifications might be the general sampling design, and what reserves approximately we would use.

Q. Of the ten hours which you devoted to this matter, beginning on Friday, and being concluded on Sunday, how much of that time was devoted to the structuring of this questionnaire?

545 Q. What do you mean by "structuring"?

Q. Making it up.

A. The entire questionnaire design. I would estimate, approximately 65 to 70 per cent of the time.

Q. Six to seven hours?

A. Roughly.

Q. And was your questionnaire then distributed to the girls who conducted the interview on Monday morning?

A. No.

Q. When?

A. On Monday afternoon.

Q. Did you do any work on the questionnaire on Monday morning?

A. Yes.

Q. What did you do?

A. I took it to Mr. Christensen and he looked it over.

Q. Did he make any changes in it?

A. He made two changes.

Q. Would you identify the changes?

A. In Question 1-A, he made—the question originally read—

A. (Continuing.) Question 1-A originally read, in the handwritten draft that I had submitted:

“Do you normally use an automobile for your regular grocery shopping?”

Mr. Christensen changed that question to:

“Do you normally use an automobile for your regular food shopping?”

A similar change was made in Question 1-B, from “grocery” to “food.”

I believe I said that there were two changes, but there were actually three changes, but it is actually the same kind of a change and that is in Question 3-B, and that question was changed in the same way.

547 To the best of my knowledge, those were all of the changes.

Q. After Mr. Christensen approved the questionnaire, you then distributed it to the girls for use?

A. No, then we typed it up—printed it and prepared it. It was not in printed form then.

Q. And in the non-printed form, it had been approved by Mr. Christensen, and then you went through the mechanics of printing it up, and then you gave it to the girls, is that correct?

A. Yes.

Q. You had a very short space of time within which to do the study, did you not?

A. Yes, it was very—very short—yes, it was very short.

550 *Redirect Examination by Mr. Christensen.*

Q. Were the procedures that you used in developing and making this survey standard procedures used by your  
551 organization in making surveys of this nature month in and month out?

A. Yes.

The Court: The objection is overruled. It will be received in evidence.

(Thereupon said document, so offered and received in evidence was marked Plaintiff's Exhibit 17.)

*Recross Examination by Mr. Dunau.*

Q. Mr. Churchill, under the column "Probable Minimum and Maximum Propositions in Population," which you previously explained, I did not quite understand your explanation.

552 How did you decide that if you get a 66 per cent sentiment, that that shows that the probable sentiment for the whole universe varies between 60 and 72 per cent?

A. Well, this gets into the basic probability theory. There are formulas for working out these estimates, but I can show you here, in an exhibit that we utilize in our work, which shows the amount of error, the different sample sizes, and the different observed proportions that will exist in data of this nature, which is ninety-five out of a hundred times.

The formula involved, in arriving at these estimates, is  $PQ$  over  $N$ .

The Court: What does that mean?

By the Witness:

A. That means it is the proportion of the likelihood of an event multiplied by the proportion—the probability

of an event multiplied by the probability of an event not happening, divided by 1.

553 By Mr. Dunau:

Q. Mr. Churchill, on the same page, Summary of Key Findings, you have an item described, "Cannot drive or car is not normally available on week days"?

A. Yes.

Q. Why did you put those two items together?

A. This, to me, represents a fair estimate of the women interviewed who don't have a car available during the day, and then—or, if they have a car available, it is meaningless, because they cannot drive.

Q. It makes no difference to you, then, whether the reason they don't use the car is that they don't drive, or they can drive and they don't have it available? Those two things are the same, in your mind, is that right?

A. They are not the same, obviously, but in terms of being able to drive to a store during the day, yes. Then I would say they are essentially the same.

Q. I see.

Now, under the Summary of Key Findings, "Have  
554 had experience where an unsatisfactory substitute had to be served to the family"?

A. Yes.

Q. The answers to the question "Have you had an unsatisfactory experience," for a woman of sixty-five could cover any unsatisfactory experience at any time during the sixty-five years of her life, is that right?

A. Yes.

Q. So that this could cover one unsatisfactory experience during the lifetime of any one of the interviewees, is that correct?

A. Yes.

555 FRANKLIN J. LUNDING, a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name for the record?

A. Franklin J. Lunding.

Q. Where do you live, Mr. Lunding?

A. I live in Winnetka.

Q. How old a man are you?

A. Fifty-six.

Q. What is your job?

A. I am Chairman of the Board and Chief Executive Officer of Jewel Tea Company.

556 Q. How long have you been with Jewel Tea Company?

A. Since June 29, 1931.

Q. Is Jewel your entire—has it been your entire business life, or virtually that?

A. No. I don't know whether it is business life or not, but—

Q. Your principal connection?

A. My principal connection, yes.

Q. Did you have any work experience before your connection with Jewel, Mr. Lunding?

A. Yes. I was an attorney for the Federal Trade Commission, New York.

Q. And since 1931 you have been a merchandiser of Jewel, is that correct?

A. No, not completely.

I joined Jewel as general counsel in 1931, I would say I got into the merchandising side of the business about—well, actively in 1934.

Q. Since that time have you made it your business to be

aware of merchandising trends in the general retail field throughout the United States?

A. Well, I have tried to.

557 Q. I will ask you to be a little immodest.

Have you been recognized as a well-informed merchandiser by any organization that tries to rate or evaluate people?

A. The American Marketing Group here in Chicago made me the Marketing Man-Of-The-Year last week, I believe it was.

Q. Now, will you explain in your own way whether there has been a change, merchandising, of retail items generally, and particularly of foods and meats in the last twenty years in this country and since the days of the gaslight era?

A. Well, of course the great step forward in retailing, from the standpoint of reducing costs, was self-service.

We got into the food store business in March of 1932, through the purchase of seventy-seven Loblaw stores, which were self-service stores, and the self-service system at that time was not common.

When we purchased these stores, they did not have meats, because in those days people shopped in what you  
558 might call specialty stores, the store that handled only special fruits and vegetables, the independent market.

We were largely handlers of groceries and household products on the self-service basis.

Then we did start into the meat business, my recollection would be about 1934. But these were service markets.

As we went on, of course we developed. We added to our markets full lines of fresh fruits and vegetables.

A further extension of perishables in the dairy end, such as cheese, and milk, and the like, and meats such as processed meats, smoked meats, and such things.



But these were all on a service basis.

Also, our locations in those days did not involve parking, because the automobile, which really revolutionized retailing, that is, I should say, the automobile plus the move to the suburbs, revolutionized retailing, so that our 559 early locations were largely at high-traffic intersections, without parking.

Then, as time moved on, particularly in the post-World War II period, you had this great transition towards larger stores, with parking to follow, you might say, the consumer to the suburbs.

The automobile is really the cause, I believe, of the change in retailing, the dramatic change in retailing, particularly the larger store with the broader lines, with the parking available nearby, which also brought what we all know as shopping centers where, with one parking, you may buy many things beyond what we would handle.

560 Q. Mr. Landing, initially, as I understand it, but perhaps not until after World War II, did you operate your stores to any appreciable degree at night? What has been the history, generally, of night merchandising in the last several years for such period as is appropriate?

A. Well, the wheel has sort of moved all the way around.

When we first started in the store business in 1932, our stores were open evenings until eight o'clock.

Then, during the war time period, you had a contraction of hours. Then, post war, with the advent of the large stores, and the self-service method, we have had extension of store hours, partly because of competition, as well as convenience to the public.

Q. Is the night vending of food peculiar to the food business, or do general merchants offer night shopping hours in recent years? Department stores, dry goods stores, and such?

A. Well, the department stores in the central cities 561. normally are not open every evening, but they are open one or two evenings a week.

But when you get into the suburban areas, particularly the large self-service department stores that are commonly known as discount centers, they, generally speaking, unless there are State laws, blue laws, that prevent them from opening, they will be open every evening and also Sundays.

A large part of their business is enjoyed in the evenings and Sundays.

In our foreign operation, we have also found this to be true.

Q. You operate in what foreign countries?

A. We have a joint venture in Belgium.

Q. In Belgium?

A. And our stores there are open until nine in the evening, which is rather unique for that country.

We do 30 per cent of our business in these stores between 5:00 P.M. and 9:00 P.M. in the evening.

562

*Cross-Examination by Mr. Dunau.*

Q. Mr. Lunding, as I understand it, Jewel Tea began to operate meat departments in the Chicago area in 1934, is that correct, sir?

A. 1933 or '34.

Q. Some place in there?

A. Yes, that's right in there.

Q. From 1933 to '34 to the present time, in the Chicago area, covered by Local 320; 571, 547, 638, 546, 262, and Group 1 of 189, there has been no meat department operation after 6:00 P.M., is that correct, in the Jewel stores?

A. You are speaking now of fresh meats?

Q. That's correct, sir?

A. Yes.

Q. It is correct?

A. Well, my impression is that we have not operated in the evening, we have been restricted, of course, by the contract with the Union.

563 Q. Well, for whatever the reason, from the time you began to operate meat departments in 1932, 1933, or 1934, through the present time, the Meat Department has not been operated after 6:00 P. M. within the area defined on Plaintiff's Exhibit 1?

A. Not so long as we have been prevented.

Now, I wouldn't know what that period is. We have not operated after 6:00 since we have been prevented, since we have had no opportunity to operate under our contract with the Unions.

. . . . .

568 Mr. Daugherty: May it please the Court, we have two photostats, Plaintiff's Exhibits 18-A and Plaintiff's Exhibit 18-B for identification. Counsel for the defendants is going to stipulate that these are true and correct and authentic copies of material appearing in the 1960 census for the State of Illinois, prepared by the Census Bureau.

From those we have prepared 18-C and 18-D, and here (indicating) are the blown-up copies which are 18-E and 18-F.

As I understand it, defendants are willing to stipulate that the figures which appear on these exhibits down to this point (indicating) are true and correct copies of the figures which appear on the census report, that the remaining calculations were obtained in the method indicated from those other figures. Is that correct?

Mr. Dunau: That is correct. We will concede the  
569 authenticity. We do not concede the materiality, relevance, or the soundness of the argument with respect to the matter as it deals with the percentage of husbands and wives.

The Court: They are admitted in evidence.

(Said documents, so offered and received in evidence, were marked Plaintiff's Exhibits 18-A, 18-B, 18-C, 18-D, 18-E and 18-F.)

570 HELEN KMIOTEK, a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name?

A. Helen Kmiotek.

Q. Where do you live?

A. 4428 South Center, Lyons, Illinois.

Q. Are you married?

A. Yes, sir.

Q. Are you employed?

A. Yes, I am.

Q. By whom are you employed?

A. Marshall Field & Company.

Q. At what hour in the day is it necessary for you, in the ordinary business days of the week, to leave your home to reach your employment?

571 A. Would you repeat that question, please?

Q. At what hour in the morning do you have to leave home to reach your place of employment at Marshall Field & Company?

A. At 7:15 in the morning.

Q. And on an ordinary day, about what time do you arrive home at night?

A. At 7:00.

Q. Is your husband also employed?

A. Yes, he is.

Q. Working full time?

A. Yes.

Q. Do you have difficulty buying meat?

A. Yes, I certainly do.

Q. With both of you working?

A. Yes.

Q. How do you usually arrange to do it?

A. Well, I usually send my husband out shopping, which is not too good, because he does not know anything about selecting meats, and then on my day off, like today, I can manage to shop a little, but I will be working six days 572 a week soon, so I will not be able to shop at all then.

Q. Do you always shop at night for groceries?

A. Yes, sometimes.

Q. Do you find that convenient?

A. Yes.

Q. Have you ever sought to buy meat at night and been unable to?

A. I would like to have bought meat at night. It is very irritating to see all that meat and not be able to buy it.

573 Q. When you shop at night, do you go into a self-service store and see this meat displayed?

A. Yes.

Q. And you cannot buy it?

A. No.

Q. What effect does that have upon your emotions?

A. It is very frustrating.

*Cross-Examination by Mr. Dunau.*

Q. Did you say that your husband works full time?

A. Yes.

Q. What are the hours of his work?

A. Well, he leaves the house at six, and he is home at four.

574 Q. He leaves home at six in the morning, and he arrives home at 4:00 P.M.?

A. Yes.

Q. How many days a week does he work?

A. He works five days a week.

Q. Monday through Friday?

A. Yes.

Q. What are your days of work usually?

A. Well, today is my day off; it would be from Monday on, except for Friday.

That is my day off.

Q. Friday is your day off, is that right?

A. Yes.

575 ROSEMARY GIOIA, called as a witness on behalf of the plaintiff herein, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you state your full name for the record, please?

A. Rosemary Gioia.

Q. Where do you live, Mrs. Gioia?

A. 919 South Harvard in Villa Park, Illinois.

Q. You are living with your husband?

A. Yes, sir.

Q. Do you have some children?

A. I have two young children.

Q. What are their ages?

A. Two and one.

Q. I take it that with those small children you have your hands full and you are not employed in any way?

A. That's correct.

Q. Is your husband employed?

A. Yes, he is.

576 Q. Does he use his car in getting to work?

A. Twice a week, yes.



Q. Are you sometimes a customer of the Jewel Food stores?

A. Yes, I am.

Q. How far are you located, approximately, from a Jewel Store?

A. Approximately two miles.

Q. Do you regard it as necessary to use the automobile to go to Jewel to shop?

A. Yes, I do.

Q. Customarily in your family when do you do your principal buying of groceries?

A. In an evening.

Q. When you are in the store do you go to the Jewel Store to buy the groceries?

A. Yes, I do.

Q. Do you drive over, or does your husband go with you, or how do you do that?

A. I will go in an evening and, if it is possible for me to get out without the children, but if I have to take the children I manage to go in the afternoon.

Having two children and the shopping cart I cannot do much shopping.

Q. When you are there in the evening buying groceries is there meat in the meat counters at the store you shop at?

A. Yes.

Q. Have you ever tried to buy any?

A. Yes.

Q. Were you able to?

A. No, I wasn't.

Q. What do you do about getting your meat then?

A. I will have to make an extra trip on Saturday.

Q. And either your husband sits in the car and takes care of the children or you go alone and he stays home and takes care of the children?

A. Right.

Q. Do you find that quite an inconvenient way of getting the necessities of life?

A. Yes, I do.

My husband attends night school twice a week, so the remainder of the night I have to quickly go to the store and leave the children in his care.

578

*Cross-Examination by Mr. Dunau.*

Q. Ma'am, what are the working hours of your husband?

A. 7:15 to 5:30.

Q. What days of the week does he work?

A. Monday through Friday.

Q. Do you drive a car?

A. Yes, I do.

Q. And how many—Monday through Friday, how many of those days is the car available to you?

A. Three days a week.

Q. What days are they?

Do they vary, or are they the same days?

A. They are the same days.

Q. What are they?

A. Tuesday, Wednesday, and Friday.

Q. You have a car available to you on those days, is that it?

A. Yes, I do.

579 HELEN MUELLER, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Would you please state your full name?

A. Helen Mueller.

Q. Where do you live, Mrs. Mueller?

A. 3938 North Bell, Chicago.

Q. You are living with your husband?

A. That's correct.

Q. Do you have any children?

A. Three.

Q. How old are they, please?

A. Eleven, seven and five.

Q. Are you employed?

A. I am.

Q. What are your regular hours of work, Mrs. Mueller?

A. 8:30 to 3:00.

Q. Is your husband employed?

A. Yes, he is.

Q. I understand he is a policeman; is that correct?

580 A. That's correct.

Q. What are his hours, his usual hours?

A. 5:00 at night to 2:00 in the morning.

Q. How do you do your shopping for groceries and meats in your family?

A. I usually try to go in the evening for my groceries, and meat I usually have to go on Saturday. I have to make two trips.

Q. And do you patronize a grocery that has a pre-packaged meat counter in it?

A. Yes, I do.

Q. You see the meat there and you are unable to buy?

A. That is correct.

Q. Would it be a convenience to you to be able to do it all in one trip?

A. Yes, it would.

Q. Buy the meat when you buy the groceries?

A. Yes, it would.

581

*Cross-Examination by Mr. Dunau.*

Q. Mrs. Mueller, how many days a week do you work?

A. Five.

Q. Which days?

A. Mondays through Friday.

Q. You say your husband works 5 p.m. to 2 a.m.?

A. Correct.

Q. That is this month?

A. Every month.

Q. The same shift every month?

A. Correct.

. . . . .

MARY ANN BEARLEY, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you state your full name, please?

582 A. Mary Ann Bearley, B-e-a-r-l-e-y.

Q. Where do you live, Mrs. Bearley?

A. 5417 North Kenmore.

Q. Chicago?

A. Chicago.

Q. Are you employed?

A. Yes, I am.

Q. And what are your hours of employment?

A. Five in the morning to 1:00 in the afternoon.

Q. Is your husband employed, also?

A. Yes, he is.

Q. What are his hours?

A. Midnight to 8:00 in the morning.

Q. When is your husband's payday?

A. Friday.

Well, as a matter of fact, he cannot pick up his pay until Friday evening around 6 o'clock.

Q. Friday evening around 6 o'clock?

A. That's right.

Q. When do you normally do your heavy grocery shopping in your family?

A. Well, usually I try to do it on Friday night, so I will have one day to myself, which would be Saturday.  
583 I do part of it Friday night, and then I have to go back on Saturday morning.

Q. And I assume, like most families, that Saturday night paycheck is a help in paying the grocery bills; is that correct?

A. That is correct.

Q. In the store that you patronize is there a pre-packaged prepared meat counter?

A. Yes, there is.

Q. And when you go in there Friday night you are unable to purchase the meat?

A. That is correct.

Q. You have the money and paycheck there and you would like to spend it for meat and can't; is that correct?

A. That is correct.

Q. So you have to make a special trip back Saturday for meat?

A. Yes, I do.

Q. Does that irritate you?

A. Yes, it does, because I do try to sleep on Saturday mornings, being that I get up at 4:00 every morning 584 during the week.

ROBERTA APPLEBAUM, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Would you state your full name for the record, please?

A. Roberta Applebaum.

Q. And where do you live, Mrs. Applebaum?

A. 2724 West Granville.

Q. You are living with your husband?

A. Yes.

Q. Do you have any children?

A. A baby.

505 Q. Approximately how old?

A. One month old.

Q. A month old? During what hours is your husband normally away at his occupation, whatever it may be?

A. He leaves the house about 8:30 in the morning and comes home anywhere between 5:30 and 7:00 o'clock.

Q. Does he use the automobile in his work?

A. Yes, he is a salesman.

586 Q. I don't hear you.

A. Yes, he is a salesman.

Q. How do you and your family buy your groceries and your meat?

A. I have to buy my meat by phone.

Q. How do you buy your groceries?

A. I have to visit till Saturday morning when he is working in the house and then I go.



Q. Do you ever buy groceries at night?

A. Often.

Q. When he is home with the car?

A. Yes.

Q. And in the store you go to is meat available, but you are unable to buy it because it is covered up?

A. It is impossible to buy it. It is impossible to buy it at night.

Q. Does that irritate you?

A. It is very frustrating.

Q. Mrs. Applebaum, did I understand correctly that customarily you buy your groceries on Saturday?

A. That's right.

Q. That is your normal shopping day?

A. No, it is not. I have to go shopping every other day.

Q. But you make your grocery purchases on Saturday, is that it?

A. Yes, sir.

Q. And you go to get your meat purchases on Saturday?

A. I can't. I have no freezer and I can't keep meat for more than two days.

588 JANE GLICK, a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Would you state your full name and address, please, Mrs. Glick?

A. Jane Glick, 743 Junior Terrace, Chicago.

Q. You are married?

A. Yes.

Q. As I understand it, you Mrs. Glick, not only live with your husband, but you work with your husband, who is an insurance broker, is that right?

A. That is right.

Q. Do you have regular hours of employment which you are in the office, or do they vary, Mrs. Glick?

A. Well, I am always there from 8:30 to 5:00, and very often later.

589 Q. That is five days a week?

A. I am always there five days a week; very often I am down on Saturday, also.

Q. In the normal course of events, what time do you usually buy your groceries?

A. Well, generally I try to buy them on the way home, and I very often don't make it.

Q. And are you able to buy meat on the way home?

A. Well, providing I can get there by five minutes to six.

Q. And are you always able to do that?

A. No, very often I am not.

Q. Would it be a convenience to you to be able to buy meat during the very early evening hours?

A. Yes, it would.

591 Mr. Christensen: May 13-B to O, inclusive, be shown as received in evidence?

The Court: All right, they are received.

647 [Session of Friday, November 2, 1962.]

JAMES VICTOR BRODNICKI, having been previously duly sworn, deposeth and saith further as follows:

*Direct Examination by Mr. Christensen (Continued.)*

648 By Mr. Christensen:

Q. Mr. Brodnicki, referring to Plaintiff's Exhibit 19 for identification, a document headed, "Jewel Food Stores, 1957 estimated costs that would be incurred if all Jewel Stores were closed in late 1957," you testified last week to the method by which you had prepared an earlier exhibit as to strike costs. What differences are there in this exhibit from the one you earlier testified to?

A. These figures are based on the company performance in the last eight weeks of 1957 and the previous ones had been based on the current years' performance.

649 Q. In 1957, did the company engage in any Sunday operations?

A. No, sir.

Q. Therefore, in figuring the daily cost of a strike, you have figured it on a 6-day week rather than on a 7-day week, is that not correct?

A. That is correct.

Q. From what source did you derive the figures "Loss of Sales"?

A. From our company records I determined what all stores were doing during this time.

Q. And do you have those work sheets available to display to counsel, sir, if he wishes to see them?

I am referring to your work sheets from which you have derived those figures.

A. Yes, sir.

Q. Now, how did you determine the figure that appears under the heading "Continuous Expenses"?

A. I analyzed each of the store expenses which were charged to the operation of each of our stores, and I analyzed each of them, whether they be salaries, supplies, 650 rent, warehousing, or administrative, to determine which of these costs would continue on in the event of a strike.

From this I was able to determine the percentage of sales as to which of these expenses would continue.

You might label these "Custodial" type of expenses.

Q. Did you use the same general formula that you used in preparing the prior exhibits?

A. Yes, I did.

Q. As reducing everything down to the irreducible expenses, and that you applied in order to determine the cost level in that period?

A. That is correct.

Q. The column headed "Loss of Earnings" bears a double asterisk. Now, why the double asterisk?

A. The footnote explains the time period in which those earnings were occurred, and it also explains, I believe, the income tax.

Q. But the footnote does not show that.

A. I believe a sentence was left out in the typing 651 of that, which should explain it.

Q. Apparently a sentence was left out.

And what is that figure? Is that as to all earnings before or after taxes, based on the 1957 experience?

A. This is earnings after Federal income tax.

The Court: What basis did you figure this on?

The Witness: The 52 per cent return.

By Mr. Christensen:

Q. That was the actual return the company paid in that year on the return?

A. Within one-tenth or so, I believe.

Q. Then the last three columns, "Continuing Expenses" and "Loss of Earnings" and the "Totals" are merely repetitions of those figures and accumulated as you go down?

A. That is correct.

Q. You show a break in the middle of the exhibit, and that means that you there convert, daily assessment 652 of exact loss, to a weekly assessment?

A. That is correct.

653 Q. How did you ascertain the amount of perishables that would be in inventory in the several Jewel Stores in the closing weeks of 1957?

A. I was able to determine this figure more accurately in 1962, finding out what perishables there were in dairy products, meats, produce and delicatessen items, and from this information I was able to reduce what is in inventory right now to the approximate value which would be in inventory in the year of 1957, based on the lower sales volume.

I was not able to do it item by item as well as I was able to do it at the current figures, so that is a reduced figure based on the sales inventory at that time.

Q. And you used the same proportions?

A. Yes, sir.

Q. Is that what you are saying?

A. Yes, sir.

Q. The figure of \$1,006,000, is an estimate arrived at by applying to the 1957 sales level, by applying it to the 1957 sales level?

A. Yes.

654 Q. The ratio of perishable products that you were able to ascertain the stores have on hand in 1962, sir, in relation to their—

A. (Interposing.) That is correct.

Q. (Continuing.) —average volume of business, I should say?

A. That is correct.

Q. And would your testimony of the other day as to what might happen with respect to perishables, sir, apply equally well to the situation as to perishables in 1957?

A. Yes, sir.

655 *Recross Examination by Mr. Dunau.*

Q. Mr. Brodnicki, on your estimated \$1,006,000 of perishable products, what value or what cost did you use in arriving at the \$1,006,000 figure?

A. Well, yes, I think I can give that to you, and may I refer to an additional worksheet?

Q. Yes, please do.

A. I was able to, based on inventory figures of our stores for the dates in September, 1962—I was able to determine the average level of inventory and the cost for

the four various commodity groups, and that is dairy products, delicatessen item, meats and produce, and

I was able to find out what the cost value of those commodities were in what might be considered an average store or an average for the chain.

I was able to do this for the time period in September, 1962, and I reduced these figures by the lower sales level were were in existence back in 1957.

I was unable to find inventory records to substantiate these figures, but I did feel that they were rather reliable.

Q. You have no information, then, as to what the actual inventory was on those products in 1957?



A. I believe that is correct.

Q. And your estimated loss is also based, is it not, sir, on an assumption that you did not have sufficient notice in advance of a strike in order to eliminate any loss of perishables?

A. No, sir.

Q. The figures at the top portion of the chart, they are not on your footnote No. 1?

A. This footnote is conjecture, and the loss would be some portion of all of that figure, and would be based 657 on the type of notice which would be granted in probably other circumstances.

Q. You say it is conjecture?

A. It is conjecture as to what the percentage of the \$1,006,000 figure would be—it is conjecture as to what percentage of the \$1,006,000 figure would be considered a loss based on other circumstances, which I was unable to predict.

Q. Going to your footnote, which has the two asterisks?

A. Yes, sir.

658 Q. And "Continuing Expenses are irreducible custodial expenses, lease charges, and are predicted upon an assumption the company could immediately get on such a basis," and what would prevent the company from immediately getting on the custodial basis?

A. I would assume that a clerical accounting staff would not be needed as of this time.

There are certain things like filing sales tax reports, that even though a store may be shut down, that it might have one more report that would have to be prepared.

I would assume the warehouse would quit functioning, and you could send home its assemblers and receivers, and it is conceivable that there could be some merchandise, which is in transit, which would have to be accepted and/or received at the warehouse, and possibly also these boxcars would have to be unloaded.

Also, in our bakery—we have a bakery which produces goods, and I assume it would be possible to send those 659 people home immediately to avoid further losses.

It is conceivable there might be some cleaning-up process which I would have to further study to anticipate these losses of costs.

661 The Court: (Interposing.) Exhibits 16 and 19 are admitted, and counsel will correct or add the missing line.

675 Mr. Dunau: I should like to offer into evidence at this point, your Honor, the exhibits which I have just 676 spoken of as exhibits for identification. Defendant Union Exhibits 3 through 3-F, constitute the papers received from the plaintiff itself and giving us a history of year by year of 1954 through 1961, of individual store earnings.

Mr. Christensen: No objection, your Honor.

The Court: They are all admitted without objection.

(Whereupon the documents which were marked DEFENDANT UNION EXHIBITS 3 to 3-F were admitted into evidence.)

Mr. Dunau: Defendant Union Exhibit 4 is a compilation made by me on the basis of the information contained in Defendant Union Exhibits 3 and 3-F, which are in evidence. May I offer that?

Mr. Christensen: Mr. Dunau, I understand that you have simply copied selected stores from the year 1961 under your Exhibit 4. This is simply—this is simply a copy job?

Mr. Dunau: Yes. When you say “selected stores” 677 I should say the stores selected were all stores in which stores were open for meat selection after 6 p.m.

Mr. Christensen: From what stores do you derive that information?

Mr. Dunau: Plaintiff's Exhibit 16, which has just been admitted into evidence, shows all stores in which meat was sold in 1961, after 6 p.m. These are 32 stores. The one store which we have excluded, and that is the 33rd store, is Hillcrest, because in Hillcrest, based on your Exhibit 13-N, Hillcrest does not operate a meat department after 6 p.m., so that store has been excluded.

678 Mr. Christensen: I have no objection to this, subject to checking the accuracy.

The Court: Subject to verification, very well. It may be received in evidence.

(Said document, so offered and received in evidence was marked DEFENDANTS' EXHIBIT 4.)

Mr. Dunau: I offer Defendants' Exhibit 5, which is a comparison of the thirty-two stores in which the sales of fresh meat are permitted after 6:00 P. M., as compared with the divisions in which no stores have permit sales—have sales of fresh meat after 6:00 P. M.

This, again, was information obtained entirely from the plaintiff's own—

Mr. Christensen: Now, if it please the Court, I get to the embarrassing position of having this objection, and we have serious objection, as to the statistical probative value of the pleaders' argument here.

679 Counsel says he prepared it himself. I don't want to cross-examine Mr. Dunau, but he has picked out part of the chain without rhyme or reason as against thirty-two stores and is statistically invalid.

He has made his own segregation, without the faintest accounting authority for it.

While I have the utmost respect for Mr. Dunau, I will not concede he is a qualified statistician or accountant. If he wishes to become such, he has got to don the robes of one and get up on that witness chair and let me have a go at him.

Mr. Dunau: If your Honor please, the objection which has just been stated as with the same objection I have made with respect to plaintiff, go to weight and not admissibility.

I could just as easily, at the conclusion of this, file 680 a brief, include this as part of the argument. It would be a valid argument. It would be based on the information taken from the plaintiff's own exhibits, and whatever objection there could be to it would be simply on the basis of whether the arguments are valid or invalid.

By putting them in this way we serve the convenience of the Court. We have a ready place for him to look for these comparisons.

Mr. Christensen: Well, if it is going in as an argument and not as evidence, upon that condition I won't object to it.

The Court: The Court will receive it. Of course, you can have your accountant analyze it and we will hear you in final argument on it, and go to the weight, rather than to its admissibility.

Mr. Dunau: Entirely agreeable with us.  
681 (Said document, so offered and received in evidence, was marked DEFENDANT'S EXHIBIT NO. 5.)

Mr. Dunau: Defendant Union 6 takes the four stores for the calendar years of 1957 and '58, in which there was a change of market-operating hours, and compares those four stores with four other stores in the same two years in which meat was sold after 6:00 P.M., but in which there was no change in marketing hours.

It compares them with four other stores in which there was no market-operating hours after 6:00 P.M. in either year, and then it compares those four stores with the over-all Jewel average.

All of this information is subject to check the accuracy of my arithmetic and was obtained from the plaintiff's own figures.

Mr. Christensen: Counsel, this, again, is an argument, is it not?

Mr. Dunau: It is on the same basis as Defendant Union's Exhibit 5.

Mr. Christensen: Well, upon that—I have no objection to it on that basis.

The Court: It is received.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 6.)

Mr. Dunau: Defendants' Exhibit 7 takes each of the—takes eight of the nine stores which Plaintiff has used as the basis for its study.

It excludes from the nine stores the 2601-Michigan City, because that store does not have a sufficiently long history to tell us anything.

It takes each of these stores, and goes from the first full year of operation through 1961, to show the percent increase or decrease in sales of each of these stores, and the purpose is to show that the variation in increase and decrease is so great that nothing can be drawn from a single year's experience in any individual store.

Mr. Christensen: Counsel, when did 2601-Michigan City open?

Mr. Dunau: It was opened on May 6, 1959. We do not have a full year for 1959; therefore, we cannot use that year. We have a full year for 1960, and a full year for 1961 in Michigan City.

Mr. Christensen: Oh, well, I object to this bobtailed exhibit, whether it be an argument or anything else.

Mr. Dunau: If you would like the comparison year to year—

Mr. Christensen: I am objecting to your presenting a bobtailed thing like this.

684 Mr. Dunau: On Michigan City, your Honor, in the exhibit presently in evidence as Defendant Union Ex-



Exhibit 3-F, for the two years 1960 and 1961, in which that store was in operation, the comparison appears on Page 7 of Defendant Union Exhibit 3-F.

Mr. Christensen: That won't help you.

Mr. Dunau: But it hardly makes any difference if I add it to this exhibit or if I keep it on Defendant Union 3-F.

Mr. Christensen: It hardly makes any difference. They are all in. You either copy them all in or none of them.

Mr. Dunau: I have no objection to withdrawing this exhibit for the present, your Honor, to copy in the 1960 and 1961 figures for Michigan City.

The Court: You may have permission so to do.

Mr. Dunau: May I understand, then, that all these are in subject to my addition on Defendant Union Exhibit 685 7 of the Michigan City Store?

The Court: That is correct.

Mr. Dunau: Thank you, your Honor. I will correct this for your Honor. This is a set of exhibits. If your Honor please, Defendants' Exhibit 2 for identification was previously identified and contains a store by store breakdown of the questionnaires, which the Plaintiff distributed amongst its stores to determine allegedly the consumer response to night operation.

I offer in evidence Defendants' Exhibit 2 for identification.

The Court: Any objection?

Mr. Christensen: No objection.

The Court: Proceed.

Mr. Dunau: Would you mark this Defendant Union Exhibit 8 for identification?

(Said document was marked Defendant Union Exhibit 8 for identification.)

Mr. Dunau: Your Honor, this is a stipulation, Defendant Union Exhibit 8 for identification, which has been entered into between the Defendants and Plaintiff subject to Plaintiff's objection to relevancy and ma-



teriality. It lists the major operators insofar as we have been able to obtain information from them, for the years 1957 and 1962, the number of self-service markets and the number of service markets they operate within this area here, the area within which the marketing hours, provision exists, and the number of employees in the self-service and service markets for each of the relevant years.

The Court: Are you through with the witness on the stand?

Mr. Dunau: Yes, I am sorry. I am through with him.

The Court: You may be excused.

(Witness excused.)

Mr. Christensen: If it please the Court, we do not know what position to take as to this exhibit without some showing by counsel as to its materiality or what it tends to prove.

The Court: You mean Exhibit 8?

Mr. Christensen: Exhibit 8. Now the fact is that counsel asked several of the major operators here to give him a census report as of 1957 and 1962. Some of the larger operators complied with his request and some did not. Very few of the independents did. I don't know what this is a sampling of or what it is contended as the materiality of it can be.

As to our own company, the Jewel Tea Company, we have no objection to the information or to stipulating what the information is. But this doesn't show either employers in the area nor employees in the area. It only shows a few who would give you some figures.

Mr. Dunau: It shows all the major employers. There is not a single major employer which does not appear on this exhibit.

Mr. Christensen: Oh, oh, oh.

Mr. Dunau: Ask Mr. Vorbeck.

Mr. Christensen: You bet I will ask him.

Hillman's isn't on there. Stop & Shop. And there are a number of the smaller chains that aren't on there.  
688 There are a lot of IGA markets.

Mr. Dunau: IGA doesn't—

We will have information, your Honor, to fill out as to any other employers by way of testimony. We will have testimony with respect to Del Farm. We will have testimony with respect to IGA. Certainly there is—

Mr. Christensen: I suggest this be withheld until we know where we are going.

The Court: Well, the Court will reserve its ruling for the present.

Mr. Dunau: Very well, your Honor.

689 EDWARD VORBECK, called as an adverse witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dunau.*

Q. Would you state your full name, sir?

A. Edward Vorbeck.

Q. Where do you live?

A. 512 Dundee Avenue, Barrington, Illinois.

Q. You are employed by the Jewel Tea Company?

A. I am.

Q. What is your present position with them, sir?

A. General attorney and assistant secretary of the company.

Q. When did you first begin to work for Jewel Tea?

A. In 1935, in September.

Q. In what capacity?

690 A. As an accounting clerk.

Q. What did you do as an accounting clerk?

A. Well, mostly posting expense accounting records, analyzing expense accounts of the company, and the route division.

Q. How long did you continue in that position?

A. I continued as an accounting clerk roughly for two years, moving around within the expense accounting section at various jobs.

Q. And at the end of that 2-year period, what position did you have?

A. I was transferred into what was known as the payroll bonus division of the company, handling unemployment compensation claims.

Q. How long did you occupy that position?

A. I would say six to seven months.

Q. Then what happened?

A. At that point the general counsel of the company, Robert Muir, died and all the members of the law department were moved up, and they made space for me as a law clerk in the Law Division.

691 Q. When did you begin working as a law clerk in the Law Division, sir?

A. My recollection would just have to be an estimate, and it would be about '38—1938.

Q. Was it during this period of time you were studying law at night?

A. Yes, sir.

Q. How long did you remain as a law clerk?

A. Until I passed the bar in October of 1940, or until I was admitted in October of 1940, rather.

Q. Then what happened?

A. I became assistant counsel of the company.

Q. How long did you occupy the position of assistant counsel?

A. I would say approximately eight years.

Q. To the date up to 1948?

A. Right.

Q. What position did you have in 1948?

A. Well, if my memory or my recollection is correct, I became in charge of the Legal Division of the Jewel Food Stores, a division of the company.

Q. How long did you hold that position?

692 A. Just for a couple of years, and then they changed the title.

Q. In June of 1950, were you appointed general attorney and assistant secretary?

A. I think I was elected assistant secretary in June of 1950. I believe I was still head of the Legal Division of Jewel Food Stores at that time. I do not believe I became general attorney for the company until about 1954.

Q. And from 1954, you were general attorney and assistant secretary to the company?

A. Yes, sir.

Q. And that is your present position?

A. That is correct.

693 Q. Does your present position entail negotiations and administration of collective bargaining agreements with Defendant Unions?

A. Yes, it does.

Q. When did you first begin working at the job of negotiating and the administration of collective bargaining agreements with the Meat Cutters Local Unions?

A. My recollection is a little indefinite, but around 1946 I commenced to attend the negotiating sessions with Mr. Hargrave of our company.

Q. Who is Mr. Hargrave?

A. He is vice-president of—I believe his title now is Public Relations. At the time, though, I worked under him it was just secretary of the company and later as vice-president in administration.

Q. When you became the assistant to Mr. Hargrave,

did his job include negotiations and administration of agreements with the Meat Cutters Local Unions?

A. Yes, sir.

Q. You assisted him in that job?

A. Yes, sir.

694 Q. Did there come a time when you became the principal negotiator on behalf of Jewel Tea?

A. There did.

Q. When was that?

A. I think the last negotiations with Mr. Hargrave, as the primary negotiator, was the one where we negotiated the self-service contract, and I believe that was in the latter part of 1952.

I think I took over the next negotiations, and as to the exact date, I am not exactly sure.

Q. Well, then, until 1952, is it approximately correct to say that you were assisting Mr. Hargrave?

A. That is correct.

Q. Then after 1952, you undertook the job of being the principal representative of Jewel Tea Company, in dealing with the Meat Cutters Local Unions?

A. With respect to the Meat Cutters Locals, that is correct.

Q. Would you explain in what division of the company the operations of the food stores in and around the Chicago area is?

A. The Jewel Food Store Division.

695 Q. What comprises the Jewel Food Store Division?

A. It has the responsibility for operating all of the Jewel Stores supervised out of our south Ashland Avenue and Melrose Park offices.

The Eisner Food Store Division is serviced out of Champaign, and is not a part, as I understand it, of the Jewel Food Store Division, although they are receiving more and more supervision today.



The third major division in this area is the Routes Division.

Q. Would you explain the Routes Division?

A. That is the parent operation of the company and was founded in 1889, incorporated in 1916, and the present corporation was a New York corporation.

We operate Routes throughout most of the states in the United States, in which we sell merchandise directly to the housewife at her home through Route salesmen who call on the customer once every two weeks, approximately the same day of the week and as close to the same hour of the day as they could get there each time.

Q. Does the company have other divisions?

696 A. Yes, sir, we do.

Q. Would you state what those other divisions are?

A. We have a division that I cannot state accurately, but it is a foreign operation, in which we are a part-owner along with some Belgian investors, in operators in Belgium.

We also have a division known as the Turnstile Division, which operates in the East. We have separated them into two parts, known as the Turnstile East and the Turnstile West. I think there are four or possibly five large discount-type operations in the east.

In the west, at the present time, or in the mid-west, I should say, we have one presently in operation in Racine, Wisconsin.

697 Q. What other division do you have, sir?

A. In addition to that, we recently acquired the Osco Drug Company. I believe it is a subsidiary operation at the present time.

Q. What does the Osco Drug Company do?

A. Well, they operate drug stores in quite a number of Midwest States. I think there are approximately forty-odd stores in operation.



I'm not as familiar with that operation as I should be, I suppose.

Q. All right; let's go back to the Jewel Food Stores Division:

Is that also sometimes known as The Chicago Division?

A. Yes.

Q. Does the Jewel Food Stores Division include stores in addition to those represented by the defendant local unions?

A. Yes.

Q. Looking at Plaintiff's Exhibit 1, if I understand 698 you correctly, then you have stores in which meat cutters are represented by Locals 262, 189, Group 1, and other groups, 546, 638, 547, 571, 320, and in addition to that, you have stores operating in territories outside the territorial jurisdiction of the defendant Unions, is that correct?

A. That is correct.

Q. The Jewel Food Stores Division, does that operate in stores under a trade name other than Jewel?

A. I think the Food City store might be one that is.

Q. Are there any other such stores?

A. None that I can recall. I don't believe there are.

Oh, I would have to qualify that. There are approximately five stores that are operated by the division called the Jewel-Osco Division, in which the food stores and drug stores are operated jointly. The store in Barrington, where I live, is a store that is operated in this division.

Q. Do these stores have meat departments?

A. Yes, the food store part of the store is called Jewel. The drug department is called Osco.

699 Q. I show you what has been marked as Defendants' Exhibit 9, which is entitled, "Store Hours, December 28, 1957."

Does that constitute the list of stores within the Jewel Food Division, as of December 28, 1957?

A. I believe it does. It is a list that was originally published in January, 1958, and changed for stores after December 28, 1957.

Q. Now, there are some stores which have a line marked through them. Will you state what the reason for that is?

A. Well, referring first to 24 Dryden, Arlington Heights, that store is lined because it was opened after December 28, 1957.

700 Q. The next one is 341 Collins Street, Joliet, and that is ruled because it is outside of this area, as described in this complaint.

Q. Now, without going through all of the rest of them—

A. I can make, I think, all of them ruled out on one or the other grounds.

Q. Either the store was opened after December 28, 1957, or it is a store which is operated outside of the territory represented by the defendant Unions, is that it, sir?

A. Yes, sir.

Q. And is it accurate to say that we could find no stores which were opened after December 28, 1957, by looking at the notation of the date opposite that store?

A. Up to the date of this publication of January 23. Actually, there were put on there some stores opened later than January 23rd, in the expectation that it would open, such as Arlington Heights, 24 Dryden, was opened on December 28th.

701 Q. If the store was opened subsequent to December 28, 1957, we would have opposite that store if it is lined through, the date on which the store was opened, is that correct?

A. Well, that would not bring you down through all of 1958.

702 By Mr. Dunau:

Q. No, but it will eliminate those stores which were opened after December 28, 1957, which appear on this list.

A. Yes, sir, that is correct.

Q. And the other stores which are crossed out, but upon which no date appears opposite them, are those stores which are operated outside the territorial jurisdiction of the defendant unions; and talking only, when we talk about the defendant unions, of Group 1 of Local 189?

A. That is correct.

Q. Now, where there appears an "S" opposite a store, does that indicate that that store is operated as a service market?

A. That is correct.

Q. Now, on the second page of the exhibit—

A. May I qualify that? That means that the meat department of that store is operated as a service market. The food-store department operated throughout the chain as a self-service operation.

Q. Now, on the second page of that exhibit there appears an explanation of hour code, and then at the bottom we have "M," as one of the hour codes, and then some-  
703 thing seems to be cut away. Can you fill that out for us?

A. M applied, and that notation is in my handwriting, to 30-Williams Street, Crystal Lake, where the coding was in—I should have put in editing this that the coding was incorrect. I recoded it to indicate that the store was open on Friday nights, open all day on Mondays, I am sorry—open all day on Friday, from 9:00 a.m. to 9:00 p.m. On the remaining days of the week it was only open to 6:00 p.m.

Q. Now, then, by applying the code which appears on Page 2 to each store where the code is designated, we can

find the hours of operation of the grocery department and the meat department in those stores, is that correct?

A. Yes, sir.

Mr. Dunau: I offer in evidence Defendants' Exhibit 9.

The Court: Any objection?

Mr. Christensen: No objection.

The Court: It is received.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 9.)

704 Q. Mr. Vorbeck, I show you what has been marked Defendants' Union Exhibit 10, which is a list of Jewel Food Stores as of December 30, 1961. Is that the same sort of list as Defendants' Union Exhibit 9, except that the date is as of December 30, 1961?

A. Yes, that is.

Q. Would you explain the cross-outs of stores on that list and tell me what they signify?

A. I will have to do this the same way I did before.

Q. All right.

705 A. The first cross-out I see is 15 South Lake, Aurora, and I don't quite understand it.

Q. Well, isn't that, Mr. Vorbeck, because 15-Aurora operates a meat department after 6:00 p.m.?

A. Yes, yes.

Q. And the cross-outs are cross-outs of those stores which operate meat departments of stores after 6:00 p.m.?

A. May I just go through them?

Q. Yes, please.

A. That is true of the next one.

I think that observation applies to every store stricken out with the exception of one or two, which I don't believe were opened as of December 30, 1961. I certainly don't

observe any other notations to be made with respect to those stores.

Mr. Dunau: I offer Defendant Unions' Exhibit 10.

Mr. Christensen: No objection.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 10.)

706 By Mr. Dunau:

Q. Now, in general, Mr. Vorbeck, in those stores in which the meat department does not operate after 6:00 p.m., does the grocery department in some of those stores operate after 6:00 p.m. to 9:00 p.m., on Friday night?

A. Yes, in general they do.

Q. In other stores does the grocery department operate from 6:00 p.m. to 9:00 p.m., Thursday and Friday?

A. In other, but not all stores.

Q. All right. And in still other, but not all stores, does the grocery department operate Monday through Friday, 6:00 to 9:00?

A. Yes.

Q. Now, in proposing, or in seeking to operate the meat department after 6:00 p.m., was it Jewel's purpose to operate the meat department during the same hours as the grocery department was operated in the store?

A. Yes, sir.

Q. Would it be approximately accurate, Mr. Vorbeck, to describe the area in which the Defendant Local Unions operate, including only Group 1 of 189, as Chicago and the suburban perimeter?

A. That's substantially correct.

708 Q. Disregarding the Defendant Unions, does Jewel Tea have collective bargaining agreements with other meat cutter locals of the same International, which contain provisions regulating market-operating hours?



A. I would have to examine the contracts to give you an all-inclusive answer on that. Generally speaking, they do not prohibit or spell out the hours in which we may market our meat products, or limit it in any way.

There may be exceptions to that in particular contracts, but we have been able to live with them. I believe that they permit—let me go to the records, if I may.

398, down in Eisnerland, operates out of East Central Indiana; it permits unlimited hours of operation.

534 out of Taylor—out of East St. Louis, covering our Payne and Taylorville stores, permits unlimited hours of operation.

543 out of Peoria, covering our Peoria and Springfield stores, permits unlimited hours of operation. 189 itself permits unlimited hours of operation in all areas except Group 1.

To the north, Local 283 in Kenosha, permits as of the last negotiation, unlimited hours of operation.

To the east, Local 350 in Lake County, Indiana, permits unlimited hours of operation.

Farther east is Local 119 in Michigan City, Indiana. They permit unlimited hours of operation.

And I believe that Local No. 539 in Benton Harbor, permits unlimited hours of operation.

And currently negotiations on two other locals. One other meat cutter local.

Q. What is the situation as to that one other meat cutter local?

A. That permits unlimited hours of operation, except on holidays. Practically all of them restrict operation on holidays.

Q. All of them, then, restrict operation on holidays, is that it?

710 A. Yes.

Q. How about Sundays?



A. I don't believe any of them presently do.

711 Q. Now, let's go to Local 283 in Kenosha:

You say the present collective bargaining agreement does not offer marketing hours in Kenosha. Do you have stores there?

A. Yes.

Q. What hours do they operate after six?

A. I believe it was limited to one night a week.

Q. And was this Friday night?

A. Yes, sir.

Q. Now, on Friday night, did the agreement provide that market-operating hours shall be from 9:00 A.M. to 9:00 P.M.?

A. The exact wording of the agreement I don't recall. That contract has a rather peculiar wording. Neither I nor counsel have contributed to the wording of that contract. I cannot tell you how it is worded.

Q. I don't want to know the exact wording, but its effect was that for Friday night the market operation was from 9:00 A.M. to 9:00 P.M.?

A. We didn't think that was the effect.

Q. Did an arbitrator decide definitely?

A. Yes.

712 Q. And did he decide that your agreement in the Kenosha market operating hours from 9:00 A.M. to 9:00 P.M. on Friday, and only 9:00 A.M. to 6:00 P.M. on Monday, Tuesday, Wednesday and Thursday?

A. That's a pretty broad conclusion. In general, I would have to say yes. I cannot state as to the specifics.

Q. I have before me, Mr. Vorbeck, a copy of the decision reported at 35 Labor Arbitration Report, 459, pertaining to the Jewel Tea Company, HS Enterprises, Piggly-Wiggly, and Amalgamated Meat Cutters and Butchers Local of America, Local 283.

On Page 466 of the award it states:

"Jewel Company, Incorporated, and Piggly-Wiggly shall immediately cease and desist from requiring or offering to its meat people employees work after 6:00 P. M. on nights other than Friday, except behind closed doors."

"It is also my award that under the terms of the current agreement, the sale of fresh meat is restricted  
713 to the hours of 7:00 A. M. to 6:00 P. M. Monday through Saturday, except on Friday night between the hours of 9:00 A. M. to 9:00 P. M."

Is that correct, sir?

A. At that time?

Q. At that time?

A. I remember the arbitrator so found, yes.

Q. He found that that was it?

A. Yes.

Q. How long had you entered into such an agreement?

A. We entered into that agreement, because we entered  
Kenosha by purchasing two stores which were then subject to the—an agreement from the Amalgamated Meat Cutters, and respected the agreement as being in full effect with respect to our company.

That restriction was in there when we first entered into Kenosha as a Jewel operation.

Q. When did you enter into Kenosha as a Jewel operation?

A. I would say about four years ago, but I'm stretching my memory a little bit here.

714 Q. When was the most recent negotiation covering the Kenosha stores?

A. 1961.

Q. And as a result of negotiations the provision providing for market-operating hours was in the negotiation, is that correct?

A. Yes, sir. Although I did not, personally, handle the negotiation, that is correct.

Q. Mr. Vorbeck, let's discuss Local 189:

At the present time how many groups, in addition to Group 1, appear in Local 189?

A. There is a group called 1-A, a group called 2, a group called 3, 3-A and 4.

Q. What is the basis for the differentiation among the different groups?

A. There is a difference in wage rate which—in the first place the groups are geographically located somewhat separately. I cannot exactly tell you where Group 4 is, without reference to a current Local 189 contract.

715 Group 1-A was created as a result of the 1957 negotiations, and as I recall, it covers Kane County only, and permits the sale of meats, I believe, six nights a week up until 9:00 P.M.

Group 2 is the area covered by Rockford and Loves Park. It is really Winnebago County, but those are the only two principal cities.

Group 3, like Group 4, I'm not sure just where they lie, without reference to a contract.

Group 3-A pertains only to Decatur, Illinois.

717 A. As far as I know, the only difference between the groupings that you show here and the groupings that we show on our own contract is that we list only, in our own contract, only those cities where we have stores.

We have not recognized 189 outside of those cities.

By Mr. Dunau:

Q. Now, the negotiations which are conducted with the Defendant Unions, does Local 189 negotiate with the employer group at the same time as the other Local Unions negotiate with the employer group?

A. Yes.

718 Q. During the course of the negotiations are provisions discussed with respect to Local 189, at the same time those negotiations are conducted with respect to the other Local Unions?

A. That is the intention of the affiliated locals, to do that. The associated employers usually try to delay that to the end, because 189, having such a wide geographical distribution, has problems all of its own that we feel needs special discussion.

Q. As far as the position of the associated employers negotiations to 189 are deferred to the conclusion of the negotiations for all other Unions, is that correct?

A. Generally, yes, although we have concluded some elements of the 189 contract, as a part of the principal negotiations.

719 Q. Let's talk about the 1957 negotiations.

Did the first meeting of the employer group and the union group, in 1957, take place on August 20, 1957?

A. Yes, sir.

Q. Were those negotiations preceded by a letter from Mr. Kelly to Mr. Hargrave dated July 22, 1957, stating the union's desire to open the contract for negotiations?

A. I cannot put my finger on the letter right now, but I would assume so, because Mr. Kelly has always addressed his letters to Mr. Hargrave, and I have no reason to think otherwise.

Q. Did you acknowledge that letter of July 30, 1957?

A. I did.

Q. Was there a letter from Mr. Kelly to Mr. Hargrave, sir, dated August 8, 1957, stating that a meeting would take place at the union's office on October 20th for the purpose of presenting the contract demands of the union?

A. There was.

720 Q. Mr. Vorbeck, I show you a letter dated July 22, from Mr. Kelly to Mr. Hargrave, identified as Defendants' Exhibit No. 11, and also a letter dated July 30, 1957, from you to Mr. Kelly, identified as Defendants' Exhibit 12, and also a letter dated August 8, 1957, from Mr. Kelly to Mr. Hargrave, dated August 8, 1957, and I ask you whether those are the letters that were sent and received?

A. They are.

Mr. Dunau: I will offer those in evidence.

Mr. Christensen: No objection.

The Court: They are admitted.

(Said documents, so offered and received in evidence, were marked DEFENDANTS' EXHIBITS 11, 12 and 13.)

721 By Mr. Dunau:

Q. At the first meeting that was conducted on August 20, 1957, did the unions, through Mr. Kelly, present their contract demands that they wished to negotiate in 1957?

A. Yes, sir.

Q. I show you a document entitled "Local union negotiating committee covering Meat Cutters Local Union 189, 262, 320, 546, 547 and 638," which has been marked for identification as Defendants' Exhibit No. 14, and I ask you whether those are the unions' contract demands?

A. They correspond with the contract demands in my own file, and they are.

Mr. Dunau: I will offer Defendants' Exhibit No. 14 into evidence.

722 Mr. Christensen: No objection.

The Court: Received.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 14.)

By Mr. Dunau:

Q. Now, during the August 20th meeting, had a representative been designated by the employer group to act as its spokesman?

A. August 20? I don't think so. My notes do not reflect such a representative had been designated.

Q. Did anything transpire at that meeting other than the explanation by the union of its contract demands?

A. Not to my recollection.

Q. Did Mr. Kelly speak for the local unions at this meeting?

A. To the best of my recollection he always has.

Q. From the time that you first began negotiating with the Meat Cutters locals?

A. Yes, sir.

Q. Mr. Kelly has always been the spokesman for the group?

723 A. Yes, sir.

Q. On August 29, 1957, did a meeting take place at your office attended by other representatives of the chain stores?

A. Yes, sir.

By Mr. Dunau:

Q. Who was present?

A. My notes show that Mr. William Bedell was present.

Q. Whom does he represent?

A. The Kroger Company. He is the labor relations representative out of Cincinnati.

There was also Mr. Lewis Carroll of the Kroger Company, the personnel manager of Kroger at that time in this office, the Chicago office.

There was Mr. Adolph Ernst, of the Great Atlantic & Pacific Tea Company, and Mr. Robert Cone, of the Na-



tional Tea Company, and Gordon Trunnell of the Hill 724 man Company here in Chicago, and I was the last representative that my notes show was present.

Q. You were the last representative?

A. Yes.

Q. Was this meeting held for the purpose of having this employer group explain its collective bargaining objectives for the year of 1957?

A. Yes, sir.

Q. And what collective bargaining objectives for the year of 1957 were arrived at by this employer group at this meeting?

A. Well, I don't know that I can say it that way—that they were arrived at. Some employee needs were listed.

Q. What were the employer needs that were listed?

A. No. 1, night openings; 2, female wrappers; 3, wholly automatic wrapping machines; 4, a flexible work day; 5, right to preprice off the premises; 6, the right to sell fresh frozen meats.

Q. With respect to the need pertaining to night openings, would you explain what that need was?

A. The same need which permeates this same law-725 suit, the need of supplying our customer shopping needs.

Q. What was the need pertaining to female wrappers, would you please explain that?

A. That is a cost factor, and it pertains to the fact that all apprentices, as they progress through the apprentice program, eventually become journeymen, so that would be the need of someone who never progresses to that of a journeyman, and the need for dexterity that goes with female hands.

This was a new labor classification which the industry was seeking, and undoubtedly it is very apparent that it still is.

Q. What would be the job of the female wrapper?

726 A. To start the wrap, and actually to complete the wrap, in 1957, I believe, on packages that have been cut, trimmed and prepared for sale by your meat cutters, and then for the females to complete the wrap so that they can put a label on that the customer could select when it was placed in the self-service case.

Q. What would be the wage rate for the female wrapper?

A. Less than that of an apprentice, but I could not give you a blanket answer on that because that is a negotiable item, of course.

Q. But it would be less than that of an apprentice?

A. We would so endeavor to get the lesser rate.

Q. Of course, that would be done by the female wrapper which is now done by the apprentice and the journeyman, is that correct?

A. That is correct.

Q. What is involved in the fully automatic wrapping machine?

A. That is a machine that completes the wrap from beginning to end without intervention of human hands  
727 other than to throw it on the machine. I am not quite familiar with the—I am not quite familiar at the present with all of the technological processes of the fully automatic machine, and I am not quite sure, without looking at a 1957 contract, whether we had the right to use the semi-automatic at that time, or not. I have a hazy recollection that we were granted that right as a result of prior negotiations, but this is just hazy.

Q. Was this collective bargaining objective, with respect to the fully automatic wrapping machines, sir, to get an agreement which would authorize the use of that machine?

A. Yes, sir.

Q. And do you now have such an agreement?

A. I believe so, sir.

Q. Was it obtained in the 1957 negotiations?

A. No, sir.

Q. Was it obtained in later negotiations?

A. In later negotiations.

Q. Please state what is involved in the flexible work day?

A. At that time the meat cutters had a day which 728 required you to bring a man in at 9:00 a. m., and no earlier, and release him at 6:00 p. m. If you brought him in by 9:00 or he had been there by that time, I think you could do it up to 8:30, but time and a half would be paid before 9:00.

We were looking for just a little greater flexible work day or flexibility, rather, and a right to bring him in at 8:00 o'clock, because actually in some areas we bring them in as early as 7:00, and if we would bring them in that would be at straight time and then release them at 8:00 and then work later as the completed regular work day.

However, the affiliated defendant local unions in this area had this absolute restriction of 9:00 to 6:00, and that would not give you time to prepare for the day's opening, or anything else.

729 Q. Assume that the market operating hours are from 9:00 a. m. to 9:00 p. m., would a flexible work day authorize the employer to bring the butcher in at noon and have him work through to 9:00 p. m.?

A. Yes, sir.

Q. The flexible work day you sought in 1957, would have authorized that, sir?

The Court: He may answer.

By the Witness:

A. The flexible work day which we sought at the 730 beginning of 1957, yes.

Towards the end, however, we compromised on a less flexible day.

731 Q. If you succeeded, in contract negotiations, of obtaining an agreement for market operating hours from 9:00 a. m. to 9:00 p. m., and if you also succeeded in obtaining an agreement for a flexible work day, would that authorize the employer to call in a butcher at noon and have him work through to 9:00 p. m.?

A. It would depend upon whether there was a third factor involved—whether a night premium was negotiated, and if so, how much.

Q. The first question is, sir: Would it have authorized you to call the man in at noon to work through to 9:00 p. m.?

A. Yes.

Q. If no premium pay were negotiated for the hours between 6:00 and 9:00, would that mean that that employee would work from noon to 9:00 p. m. at straight time rates?

732 A. Yes, sir, with a break, of course, for the meal.

Q. And that would be one hour out for lunch for which he is not paid?

A. It would be either lunch or supper, and it would be my assumption in this case that it would be for supper.

733 Q. And part of the negotiations then pertaining to market operating hours and the flexible workday would be to negotiate a premium rate for the hours between 6:00 p.m., and 9:00 p.m., is that correct, sir?

A. That is correct.

Q. If the premium rate for work after 6:00 p.m. were \$.25 an hour, how much would that mean to a butcher in

take-home pay if he were called in at noon to work until 9:00 p.m.?

A. \$.75 a day.

Q. So that his premium pay for working the hours between 6:00 and 9:00 would be \$.75 more if he did not work from 6:00 to 9:00, but would come from 9:00 a.m., and work to 6:00 p.m., is that it?

A. That's right.

Q. If the premium pay negotiated were time and a half and he came in at noon and worked until 9:00 p.m., would he receive a half time extra for each hour after 6:00 p.m.?

734 A. Yes, sir.

Q. And if no premium pay were negotiated for the hours after 6:00 p.m., would that mean that the employee would work from 6:00 p.m. to 9:00 p.m. at the same rate of pay he received before 6:00 p.m.?

A. Yes, sir.

Q. Please describe what is involved in the list as the pre-pricing off the premises?

A. There are a great many products, such as packaged weiners, all kinds of prepackaged luncheon meat, that are packed by the packer. It is a very simple matter for the packer to price. He could run it through a machine and mechanically price it, thereby saving time. How much, I don't know.

735 Q. Would it mean that employees presently working in the retail meat department of the stores represented by the Local Unions, would have that work performed by other employees not in the retail meat departments?

A. Yes.

Q. Please explain what is involved in the right to sell frozen meats processed off the premises?

A. Very few of the retailers have facilities for freezing



meats on the premises. However, your packers do have such facilities and will be very happy to supply our retailers with frozen fresh meats, which are ready-wrapped and ready for sale. All he would have to do is put them in his counters, display them for the customer to purchase.

The contract, as I recall it prior to 1957, permitted the selling of frozen fresh meats, providing the freezing was done on the premises, which was, of course, practically no value to the entire retail meat industry, but prohibited the sale of frozen fresh meats prepared off the premises.

Q. These six employers' needs which you have described, these are inter-related needs, is that correct?

Mr. Christensen: Will you repeat that?

By Mr. Dunau:

Q. These six needs you have described are inter-related needs, are they not?

A. No, sir.—Each need can stand on its own feet.

Q. The flexible workday was not related to night opening?

A. Not alone. It is still of value to you. You can extend it forward into the early morning hours, as well as through the late hours.

Q. Was it importantly related to night hours?

Mr. Christensen: I will object to calling for these comparative answers.

The Court: He may answer.

By the Witness:

A. Yes.

By Mr. Dunau:

Q. Now, isn't it a fact, Mr. Vorbeck, that everything about a contract negotiation is inter-related?

A. It is hard to give you an answer to that, sir. They take many, many factors into account and they do



737 have relationships of various values. That's all I could tell you.

738 Q. Would it be fair to say that one demand cannot be isolated from another in evaluating that?

A. No, I don't believe you can—you can isolate them.

Q. Do you isolate them, Mr. Vorbeck?

A. Yes. You take them in pairs, to some extent at least. Night operation and the flexible work day are very closely related.

Female wrappers and the fully automatic wrapping equipment are interrelated. You get one and you don't need the other.

Although the female wrapper might be of value to the smaller retail merchant where he could not possibly afford, due to lack of volume, the automatic.

Frozen meats, not related to anything else.

Pre-pricing off the premises, perhaps there are some relationships to the others. It is a form of labor cost saving.

Q. And it certainly, therefore, has relationship to the cost of labor?

739 A. Yes.

Q. That is of prime importance in the negotiation of the labor agreement, is it not?

A. Right.

Q. Mr. Vorbeck, did a meeting take place at the Bismarck Hotel on September 5, 1957, attended by the employer group and the Union group?

A. Yes, sir.

Q. Who were present on behalf of the employer?

A. The list was very long.

Joseph Quirk, and Robert Cone of National Tea.

Q. Is that C-o-n-e, sir?

A. Yes, and Quirk is Q-u-i-r-k.

Vern Carr and Gordon Trunnell of Hillmans.

Q. Would you spell Trunnell, please?

A. T-r-u-n-n-e-l-l.

Harry Rosenhagen, of Hi-Low.

Louis Carroll and James Parker of Kroger Company.

Adolph Ernst of the A&P.

740 Q. C. T. Ausdall of the Piggly-Wiggly. I believe that is the Piggly-Wiggly Midwest.

Al Kapner, I'm not sure of the spelling. I think it is K-a-p-n-e-r, of Goldblatts.

Warner Richardson, better known as Dick, of Wieboldts.

Don Racz of Save-Way.

Myself, from the Jewel Tea Company.

Ted Meindel from Dell Farms.

Charles H. Bromann of the Associated Retailers of Greater Chicago.

James O'Connor of the Fair.

George Cokalis of Sure Save.

Charles Kissell of IGA.

Q. And I believe you already identified the representatives from National Tea and Hillmans?

A. Yes, at the very beginning.

Now, their list is the list of those who were present at the meeting concerned. Who others may have come in or departed there this list will not reflect.

741 Q. This is substantially the same group of employer representatives who continued to meet with the Unions throughout the—with the Unions throughout the 1957 negotiations?

A. That is correct.

Q. Who is Charles Kissell?

A. He was the representative who appeared on behalf of the IGA markets. I don't know too much about him, prior to his appearance. This was, I believe, his first appearance, at the negotiations. He claimed to represent some sixty odd IGA markets.

Q. Were those markets service or self-service?

A. I don not know. I rather thing self-service for the most part, from the positions they took.

Q. Do you know how many stores in 1957 comprised the Hillman chain?

A. No, sir.

Q. No idea?

A. Oh, I could give you an approximation.

Q. How about approximation?

A. Your own exhibit here should give you the  
742 answer.

Q. Unfortunately, this exhibit does not have Hillman.

A. I'm sorry, I have forgotten about that.

Q. And there was an objection to Hillman. I should like to know what you know about Hillmans, sir.

A. I think right around ten markets in this area. They are all large.

By Mr. Dunau:

Q. Service or self-service?

A. I, personally, don't know.

Q&A. How many stores did Goldblatts operate in 1957?

A. A very small number. Theirs are operated as a meat department in the department store, and I believe they deposited—it could be as few as two or three. There weren't many.

Q. Has Goldblatts since gone out of the meat department business?

743 A. That is my understanding.

Q. Do you know how many stores comprise the Dell Farm chain?

A. About five or six.

Q. That's a guess, isn't it; Mr. Vorbeck?

A. Fairly accurate. I heard Mr. Meindel at many meetings.

Q. All right. Did he operate service or self-service markets?

A. I have never been in one of his markets; I don't know.

744 By Mr. Dunau:

Q. How many stores did Save Way operate?

A. I don't know.

Q. That is Tony Racz's outfit?

A. I do not know.

Q. More than one or two?

A. I don't know.

Q. In the '57 negotiations what was Mr. Meindel's position, representing Del Farms, on the subject of night opening?

A. One note indicates that he was in favor of Friday nights. I have no independent recollection of what his viewpoint was.

Q. Mr. Vorbeck, in your deposition at Page 21, you stated with respect to Mr. Meindel:

"I think that his position could be stated he would operate at any hours he could."

Is that correct?

A. Knowing Mr. Meindel, I still think that is correct, yes.

Q. What was Mr. Cokalis' position, representing Sure Save, on night openings?

745 A. He was interested in some nights of operation. Just how many, I don't recall.

Q. Would you state that his position was very much like Jewel Tea's?

A. I think so.

Q. What was Kroger's position on night openings in the '57 negotiations?

A. Kroger was not then nor now too favorably inclined toward night operations. To them it was a cost factor. How much would we have to pay for the hours after 6:00 P.M.?

Q. In other words, they determined their position on night operations based upon how much it was going to cost to operate at nights?

A. Well, I assume that is one of the factors they take into consideration.

Q. And how much is it going to cost to operate at night, also includes how much you are going to have to pay butchers for working at night, is that it?

A. Naturally.

746 Q. In the course of negotiations, as the positions of the employer representatives were expressed, is it accurate to state that the cost of labor for a night operation was an important consideration in the position of the employers?

A. Yes.

Q. In order to operate a service meat market, Mr. Vorbeck, do you need the employees on duty?

A. Yes, sir.

Q. You cannot operate it unless you have an employee on duty; that's right, isn't it?

A. That is correct.

751 Q. Mr. Vorbeck, we discussed the August 29, 1957, meeting, at which you and a number of the representatives of a number of chain stores discussed certain employer needs.

Now, at the conclusion of that meeting on August 29, 1957, did you attempt to persuade Mr. Bromann, of the Associated Food Dealers to join with you in seeking ratification of those employer needs, or fulfillment of those employer needs, rather?

A. Did you say August 29th?

Q. That is right, the meeting, I believe, at Jewel Tea offices.

A. I don't believe I did on August 29th.

Q. Did you on August 30th?

A. Yes, sir.

752 Q. You say you did?

A. Yes. I at least endeavored to indicate an approach to the problem that I thought might work to his satisfaction and to the satisfaction of the other people or the Union representatives as well as ourselves.

Q. Did you write a letter to him on that subject?

A. I did.

Q. Is that the way in which you sought to persuade him, or did you also speak to him on that date?

A. I don't think I spoke to him.

This was more of a letter of explanation than it was of persuasion, and also a statement as to the general objectives of the changes in the current negotiations.

753 Q. Mr. Vorbeck, I show you a letter dated August 30, 1957, from you to Mr. Bromann, and ask you whether this is the letter which you wrote to Mr. Bromann?

A. Yes, sir, it is.

Mr. Dunau: I offer that letter in evidence.

Mr. Christensen: No objection.

The Court: It is received.

(Said document marked DEFENDANT'S EXHIBIT 15 was received in evidence.)

Q. Now, before the meeting which took place Sep-  
754 tember 5, 1957, was Warren Richardson of Wieboldt's selected by the employer group to act as the employer spokesman?

A. I don't know whether it was before or later. He was selected to act as chairman.



Q. Did he act in that capacity for one or two meetings?

A. Yes, he did.

Q. And thereafter for the course of the 1957 negotiations did the chairmanship rotate among other members of the employer group?

A. I would say it did, yes.

Q. So that for the 1957 negotiations there was no single spokesman for the employer, is that correct?

A. Not for the complete duration, no.

Mr. Christensen: Mr. Dunau, may I interject?

We sometimes have used the phrase "chairman" and sometimes "spokesman". I take it that actually there was no chairman in the technical sense of the word? I take 755 it that "spokesman" would more accurately describe what we are talking about, is that correct?

I just would like to have it cleared up, I don't know myself.

By Mr. Dunau:

Q. Mr. Vorbeck, does the employer group use the word "chairman" in speaking of the person who heads the employer group?

A. We have used that. We have also used the title, "spokesman".

Q. When you have used "chairman" or "spokesman" you are talking about the same thing?

A. That's correct.

Q. Are you talking about the individual who is designated by the employer group to express the employer position in the course of negotiations?

A. That is correct. There is nothing very formal in our proceedings insofar as his designation is concerned.

756 Q. Now, at the September 5th meeting was there, before that meeting, a caucus of the employer group?

A. There must have been. My notes indicate the Union did not come in to the meeting until after lunch.

Q. Who is Merrill S. Morse?

A. At that time he was the vice president in charge of all store operations for Jewel Tea, and I believe a director of the company.

Q. At the employer caucus on September 5th did Mr. Morse state that Jewel Tea would be willing to trade three hours on Saturday afternoon for three hours on Friday night?

A. My notes so indicate that he did.

Q. Did you receive a telephone call on September 9, 1957, from a Mr. Rosenbogen of Hi-Low?

Mr. Reporter, that is spelled R-o-s-e-n-b-o-g-e-n.

What is your date?

Mr. Christensen: September 9th.

The Witness: That should be Rosenhagen.

757 By Mr. Dunau:

Q. Will you spell it for us?

A. It is R-o-s-e-n-h-a-g-e-n.

Q. Did Mr. Rosenhagen state to you that Hi-Low was interested in one night of operation, but no more?

A. Yes, sir.

Q. Did the next meeting of the employer group and the Union group take place on September 11, 1957?

A. Yes.

Q. On that date did you take the position that there were three courses open to you on the subject of night operations?

A. I don't know whether I took it as a position or outlined it as a note to myself. I did outline three courses of action possible.

Q. Would you state what those three courses of action were?

A. No. 1, pay a differential to any store open at night.

No. 2, increase the total wage offered to the Union to the point they cannot refuse.

758 No. 3, litigate.

Q. Now, with respect to No. 1, to pay a differential to any store that would operate at night, would you explain that, please?

A. I would assume that I was thinking somewhat along the lines of our self-service settlement in which we paid \$7 across the board more for journeymen, I am speaking of weekly wage rate, than was paid to journeymen in the service market.

I had no specific amount in mind.

Q. Your thought, then, was that for a market which would be open at night, employees working in that market would be paid a higher wage rate than employees working in a market which was not open at night?

A. Either through that device or through an overtime differential. You can do it either way.

Q. You were thinking of money to induce people to work at night?

A. Right.

Q. The same, I take it, is true of the second alternative? Increase the total wage offered to the point  
759 where the Union could not refuse it?

A. Yes, sir.

760 Q. That is, that you would make an offer so high that the Union would not be in a position to turn it down?

A. That's right. Or, more stated affirmatively, that they would endeavor to sell it.

Q. That they would endeavor to sell it to whom?

A. To the membership.

Q. So that you would offer them a high enough wage proposal so that the bargaining group representing the Unions would try to sell night operation to the members, is that it?

A. Right.

Q. And the third, of course, litigate, was in the event that you were not successful in securing the concessions in negotiations that you would start a lawsuit?

A. Well, yes, that is correct.

Q. Now, on September 11th, at the meeting between the Employer group and the Union group did the Employer group make a proposal to the Union group?

A. Yes, sir.

Q. Would you state the terms of that proposal?

761 A. All employers, all except those employers represented by the Associated Food Retailers, offered to retain the present service and self-service contracts, with the following changes:

Now, there are eleven items in this offer. Do you want all of them repeated?

Q. Would you, please?

A. One, a term of two years.

Two, one night of operation per week in the markets, the night to be selected by the employer. Later on in the meeting, after recess, the employers agreed on Friday nights.

Three, flexible work day.

Four, a female wrapper classification with a wage scale—do you want the wage scale?

Q. No, that won't be necessary.

A. (Continuing.) Five, remove the restrictions on automatic wrapping equipment.

Six, wage increases for the journeymen, which is our principal classification, of \$4.00 the first year and \$3.00 the second. And appropriate smaller increases for the apprentices.

762 Seven, right to have delicatessen items pre-priced off the premises.

Eight, the right to sell all types of frozen fresh meat processed off the premises.

Nine, the right to supplement industry demands at any time.

Ten, to insert the following provision in the contract: "This agreement shall be binding upon the employer herein and its successors and assigns."

Eleven, the offer was made applicable to all Locals represented except 189, with this further classification, that those employers who have 189 contracts wish to discuss 189 as a separate issue.

Q. Now, Mr. Vorbeck, at this meeting on September 11th, did the Employer group agree that Mr. Bromann would present a proposal on behalf of Associated to Mr. Kelly at a later meeting?

A. I don't see any note to that effect. I see a note to the effect that Mr. Kelly had noted the separation between the Locals, and he wanted to hear from the industries.

763 Q. Mr. Vorbeck, would you look at your notes under date of September 13, 1957, page 3?

A. That's two days after this meeting, right.

Q. That is correct. That is a report that you were making to Mr. Hargrave, H-a-r-g-r-a-v-e.

A. Yes, sir.

Q. Does the paragraph towards the bottom of that page read:

"Pursuant to prearrangement, I called Mr. Bromann this morning to find out what offer he had made on behalf of the Independent Food Retailers to Mr. Kelly on Thursday afternoon."

Mr. Christensen: I will object to that. That is not an impeaching question.

Mr. Dunau: I am not suggesting it as an impeaching question.

The Court: Read the question.

(Question read.)

The Court: Overruled.

By the Witness:

A. That appears on Page 3 of my memorandum.  
764 By Mr. Dunau:

Q. Does that refresh your recollection that at the meeting on September 11th, the Employer group agreed that Mr. Bromann would meet with Mr. Kelly to present an offer on behalf of Associated?

A. I don't know that it refreshes my memory to the effect that the Employer group agreed that he would meet. I think Mr. Bromann decided that he would meet.

Q. And did he also tell you at that time that he would report the offer to Mr. Kelly?

A. I think he did, yes.

Q. And did he report the offer to you that he made to Mr. Kelly?

A. Yes, he did.

Q. And did he report it to you in detail?

A. I believe he did. Yes, my memorandum of the 13th reports an offer which he made.

Q. Did the next meeting of the Employer group and Union group take place on September 15, 1957?

A. Yes, sir.

Q. At that meeting did Mr. Bromann report to  
765 the entire group the offer he had made to Mr. Kelly?

A. Yes, sir.

766 Q. At that meeting, sir, did the employer group, with the exception of Associated, take the position that market operating hours would be at the discretion of the employer subject only to the qualification of no work on Sundays and holidays?

If you will look on page 5 of your notes, for September 18, I think you will find it.

A. You are correct.

Item 2 of that proposal says that hours of market opera-



tion should be directed by the employer, and also that there shall be no market operations on Sundays or holidays.

Q. Did Mr. Kelly at that meeting state that market operating hours was a negotiable issue?

A. I find one note to the extent that he had told a subcommittee that Friday night could be had for enough money.

Q. And would that make it, in your view, a negotiable issue?

A. Yes.

Q. Was a meeting held on September 26, 1957, between the employer group and the union group?

A. Yes, sir.

Mr. Christensen: What was that date again, 767° please?

Mr. Dunau: September 26.

Mr. Christensen: Thank you.

By Mr. Dunau:

Q. Was another meeting held on October 2, 1957?

A. Yes, sir.

Q. At the time of that meeting, were you in the process of working up—

Mr. Christensen: (Interposing.) Which meeting, please?

By Mr. Dunau:

Q. At the time of the October 2 meeting, sir, were you in the process of working up a proposal that market operating hours shall be from 9:00 a.m. to 6:00 p.m., Monday through Thursday, and on Saturday, and on Friday from 9:00 to 9:00, and Sunday closed?

A. On October 2?

Q. On October 2, yes, sir, and if you will look on page 5 of your notes for October 2, you will find it.

A. Yes, sir.

Q. Were you in the process of doing that on that date?

768 A. Yes, sir.

Q. Was there a meeting held by the employer group and the union group on October 16?

A. Yes, sir.

Q. Was there another meeting held between the employer group and the union group on October 22?

A. There was.

Q. And at that meeting was a proposal made by the employer group for all employers except Jewel?

A. Yes, sir.

Q. At the inception of the 1957 negotiations, Mr. Vorbeck, the agreement which was then in existence had the market operating hours provision which limited market hours from 9:00 to 6:00 p.m., is that not correct?

A. Yes, sir.

Q. That provision had been in the agreements at least since your first acquaintance with them, is that not correct?

A. Yes, sir.

Q. And that would go back to about 1945, is that not correct?

A. About 1945 or 1946, yes.

769 Q. Now, did the proposal for the entire employer group, made on October 22, leave the market operating hours provision which had existed until then, sir, unchanged?

A. Yes, sir.

May I check my notes for just a minute?

Q. Yes, please do.

A. Substantially it did, I am sure of that.

I believe the proposal provided for the sale of some products outside of normal market operating hours, such as fresh poultry processed on the premises, fresh pork, sausage, smoked ham and smoked butts.

Q. With respect to the sale of fresh meat, at least, it left the market operating hours provision as it had been for the past years, is that not correct?

A. That is correct.

Q. Had you been informed did an employer caucus take place prior to the meeting with the union on October 22?

A. It probably did, although my notes show that the union came in there at 11:00, and then at 11:10 we 770 asked them to leave, but I have no notation or notes covering the hours from 9:00 to 11:00 or 9:30, whatever it may have been.

Q. But there was an employer caucus sometime during that day, was there not?

A. I am sure that there was.

Q. During that day at the employer caucus, were you informed by the employer group that they planned to make the provision or to make the proposal which would not change the market operating hours provision?

A. Yes.

Q. And at this point Jewel Tea was alone among the employers in seeking a change?

A. That is correct, yes.

Q. What did you state to the employer group when they stated to you that they were no longer going to pursue an attempt to change the existing market operating hours provision?

A. On that date we informed the employer group that if the limitation on the hours at which we could market our products was not lifted or modified acceptably to the company, that we intended to litigate the question with 771 regard to the restriction.

I also informed them that Mr. Bromann had been informed of this on October 11, I believe it was, because I remember personally calling on him at his office and giving him a copy of our counsel's letter.

We also informed them that we would endeavor, if we could, to negotiate a satisfactory market operating provision, and if we could not do so, we felt compelled to find out what the courts would provide for us.

Q. Did you, on that date, to the employer group, read the letter from your counsel on the subject of market operating hours?

A. I did.

Q. Vorbeck, I show you what has been marked 772 as Defendant Unions Exhibit No. 16, a letter to your attention, from Winston, Strawn, Smith & Patterson, dated October 2, 1957, and ask you whether that is the letter which you read to the employer group at that meeting?

A. This is the letter.

Mr. Dunau: I will offer this into evidence, your Honor.

Mr. Christensen: No objection.

The Court: It is admitted into evidence.

(Said document, so offered and received in evidence, was marked DEFENDANT UNIONS EXHIBIT 16.)

By Mr. Dunau:

Q. Mr. Vorbeck, had you asked the firm to prepare this letter for you for use in negotiating?

A. Yes, and also to determine whether I had a valid basis for approaching the matter along those lines.

I never wanted to approach a union without some substance to my position. If I was off base, as I did not have time to research it myself, I wanted to be so informed 773 and then I would not explore the avenue any further.

Q. Did you, in addition to this letter from the law firm, receive another letter from them, or a memorandum from them, sir, covering this subject about this time?

A. Not that I recall.

Q. One purpose for this letter, however, was to use it in the negotiations, is that right?

A. And it would supplement my basic approach to it, yes.

Q. You stated that about October 11, sir, you had met with Mr. Bromann, and did you visit him at his office?

A. Yes, sir.

Q. And was the purpose in visiting him to inform him that if a change in market operating hours was not negotiated, that he and Associated would be named as co-conspirators in a lawsuit with the union?

A. It was not stated that way.

Q. Please state how it was stated.

A. I asked them if they would withdraw their 774 opposition to night marketing.

I stated that if some satisfactory market operating hours provision was not negotiated, that we would feel compelled to litigate this question, and that as principal opponents to extending the hours of operations, they undoubtedly would be named as one of the co-defendants, but I did not know just what co-defendants might be named at that point.

775 Q. Did Mr. Bromann at that point say "Why single out Associated, we're just one of the people on the contract, just like you"?

A. No, sir, I don't recall that. He said very little.

Q. He did not mention the fact that he and you and all other employers were in the same position?

A. Not that I recall.

776 Q. Now, at the meeting between the employer group and the Union group, was a proposal made by the employer group which left the market-operating hours provision intact?

A. Yes, sir.

777 Mr. Christensen: Are you on October 22, still?

Mr. Dunau: We are still on October 22nd. We were talking about the employer caucus; now we are talking about the meeting between the two groups.

The Witness: Yes, sir.

By Mr. Dunau:

Q. Did you, on that date, say to both groups that you thought the market-operating hours provision was illegal?

A. I did.

Q. Did you read it to the employer group, the letter that you had received from your law firm?

A. I read to both groups the letter.

Q. Did you say that you agreed with the entire proposal, employer proposal, except for leaving market operating hours intact?

You may find it in your report to Mr. Hargrove of October 23rd, on Page 3.

A. Yes, sir, I informed the group that Jewel was  
778 in basic agreement with the industry's proposal, with the exception of the fact that it did not provide for the right to operate our markets at night.

Q. Did you also state that the successful outcome of litigation would inevitably mean that market operations would automatically be open seven days a week, twenty-four hours a day?

A. I think I did.

Q. Did you also state that if any employer did not go along with Jewel, that employer would be named as a co-conspirator in a suit?

A. I don't recall making that exact remark, although if counsel can refer me to a note to that effect—

Q. Did you make it at that meeting, do you recall?

A. I don't think I made such a blanket statement.



779 Q. Did you make it at a later meeting?

A. I have always felt that anyone who did continue to insist that we be so restricted could be named as a co-defendant.

Q. So anybody in opposition to Jewel's position could be named as a co-defendant?

A. Yes, sir.

Q. Did you state that position to the employers, either at that meeting or at an ensuing meeting?

A. I think I made it pretty clear at various meetings.

780 Q. Was it your position, Mr. Vorbeck, that anybody, any employer who opposed Jewel's position on marketing hours could be named as a co-conspirator in a suit?

A. Any employer, yes, sir.

Q. And did you state that to the Employer group?

A. I am sure that I did.

Q. Now on October 22, did you meet separately with Mr. Kelly and other representatives of the Union?

A. Yes, sir.

Q. Did Mr. Kelly ask you what Jewel had in mind over and above the proposal which the other employers had made?

A. Yes, he did.

Q. Did you answer that night operation was not like self-service, so that no comparable wage differential could be offered for agreement on night operations?

A. Yes, sir.

Q. What did you mean when you stated that?

781 A. We paid \$7.00 per week extra for self-service.

It was my opinion, and I think the opinion of our operators, that while night market operations had extended—extended hours of operation had additional value, they were not as valuable to us as self-service, so that we had nothing in mind as profitable, shall we say, to either the Union or our employees as a \$7.00 weekly differential.

Q. In fact you were not sure that night operations would increase your profits at all?

A. I don't think I am the proper one to answer on that.

Q. You were not the one who was negotiating, Mr. Vorbeck?

A. Certainly, but we felt it was profitable enough that we were going after it.

Q. You had an opinion on the subject, did you not, Mr. Vorbeck?

A. Yes, sir.

Q. Was it your opinion that you really did not know whether you were going to make any more profit by 782 going to night operations?

A. I don't know that that's my opinion then or now. As of now, certainly it is not my opinion, but even then we wouldn't have been seeking it if it had not been so profitable.

Q. Was it a guess as to whether it would be more profitable?

A. I don't think so.

783 Q. Mr. Vorbeck, did you state to Mr. Kelly the wage increase you had been authorized to make by your superiors?

A. As of that time?

Q. As of October 22nd.

A. Just generally, I believe.

It was somewhat more than the industry had offered.

Q. Did you state to Mr. Kelly that the wage increase which was somewhat more than the industry had offered was based on obtaining agreement to female wrappers?

A. I told him I doubted very much whether I could make the same offer without female wrappers.

Q. So that the offer that was made was based upon getting agreement upon female wrappers?

A. That was true of us and true of the industry also at the time.

Q. And did you also state that if you could get no agreement upon female wrappers, you would make no wage increase beyond that of the rest of the industry?

A. I don't know that I stated it on that date, 784 and whether I ever stated it, I don't know.

Q. Did you state that if female wrappers were not agreed upon by the Union, that the wage increase that you had offered would have to be substantially modified?

A. I don't recall it. If you will refresh my memory—

Q. Look at Page 5 of your report to Mr. Hargrave of October 23, 1957, the first full paragraph.

A. The one beginning "The next question"?

Q. That is correct.

A. That is what I have already testified to that, but I will state it again.

"The next question which was directed to me was whether we would make the same wage offer if female wrappers were eliminated.

I told him that I doubted it very much, and that, moreover, they would find a lot of the other operators falling away from the industry proposal if they would eliminate female wrappers."

Q. Did Mr. Kelly inquire of you as to the premium, 785 that you were willing to pay for work at night?

A. Yes, sir.

Q. What did you tell him?

A. Twenty-five cents per hour.

Q. Did you also discuss with him a guarantee of the number of employees who would be working at night?

A. Yes.

Q. Was the proposal for a twenty-five cent premium made in conjunction with the proposal for a flexible work day?

A. Yes, sir.

Q. That would mean, would it not, Mr. Vorbeck, that if the employee were called in at noon and worked till 9:00 o'clock, 9:00 P.M., he would get 75 cents for working at night, is that right?

A. That is correct, if the flexible work day were agreed upon to start at 12:00 noon.

Q. And the proposal for a flexible work day at that time was for an entirely flexible work day, was it not?

A. Yes, sir.

786 Q. The next meeting of the Employer group and the Union group took place on November 1, 1957?

A. Yes, sir.

Q. Prior to that meeting did you meet with Mr. Kelly at his office?

A. I did.

Q. Did you make to Mr. Kelly a proposal on behalf of Jewel Tea alone?

A. Yes, sir.

Q. Did that proposal on behalf of Jewel Tea alone provide for five nights of operation, 6:00 p.m., to 9:00 p.m., Monday through Friday, journeymen to be on duty Thursday and Friday, and the first employee to be called in on other days to be a journeyman?

A. Yes sir.

I would like to qualify that just a little bit. We didn't put any limitation on the hours of operation even on the five nights, just five nights of operation.

Q. Very good.

787 Q. I show you what is entitled, "Offer made to Union on November 1, 1957, on behalf of Jewel Tea Company, Inc," identified as Defendant Union Exhibit 17, and ask you whether this is the offer you made to Mr. Kelly on that date in his office?

A. Yes, sir, it is.

Q. Mr. Vorbeck, when did you make these notations on the proposal dated November 1, 1957?

A. I think they were made in the presence of the Union, most of them, at least.

788 Q. On the same day that it was offered to Mr. Kelly?

A. Oh, yes; yes.

Q. Now, would you read for us what the notation on the left topmost margin of the pages?

A. "Right to change to day operations only."

Q. Now, would you read what you have written opposite "Scope"?

A. Opposite is a small letter "b" and opposite that, "These wage scales are applicable to any market which is operated after 6:00 p.m., that is open for the sale of fresh pork, veal, lamb, mutton, and so forth, after 5:00 p.m."

789 Q. Opposite "term"?

A. Two years.

Q. Opposite "Nights of Operations"?

A. It says five, Monday through Thursday.

Q. And under that?

A. It says "Journeymen on duty Thursday and Friday, first employee called on other nights must be a journeyman."

Q. And opposite "Effective," that is November 25, 1957, is that not correct?

A. Yes.

Q. And under 4-A, opposite "8:00 A. M. to 9:00, Monday through Friday"?

A. Yes, and then opposite B, it says, "8:00 A. M. to 6:00 on Saturday," and then on the right-hand margin it says, "No work on holidays and Sundays."

That "4" pertains to the work day.

Q. Now, on the second page, opposite 7 or below 7,

there is a notation which is crossed out, and would you please state what that is?

A. It says, "50 per cent of increase retroactive 790 to 10-7; balance effective on date night operations began."

Q. And below that?

A. Below that or opposite Item 8 it states:

"50 per cent of increase effective 10-7-57; balance effective when store opens nights."

Q. Now, on Page 3, opposite 9, does that state:

"Combined service and self-service contracts"?

A. Yes, sir.

Q. And opposite 10, would you read that, please?

A. (Reading):

"No objection to settlement with industry without night operations at a lesser wage scale."

Q. And opposite 11, what does that say; would you read that, please?

A. (Reading):

"No more favorable terms to be granted to any other operator for night market operations unless the same 791 terms are granted to Jewel."

Mr. Dunau: I believe I have offered this into evidence. There were no objections, as I recall it.

Mr. Christensen: Would you ask him at the top of that page about the "alternative offer"?

By Mr. Dunau:

Q. On Page 3, Mr. Vorbeck, at the top of the page, sir, is "alternative officer," and would you explain that, please?

Perhaps if you went back to Page 2 you might be able to refresh your memory.

A. I think it must have applied to service markets.

Mr. Christensen: But what is the word that is written in there?



By the Witness:

A. The word is "used," and I think that offer was used, but I am just a little bit mixed up at the present moment.

Mr. Christensen: I have no objections.

792 The Court: It may be received into evidence.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 17.)

Mr. Dunau: Did I give your Honor a copy of that?

The Court: Yes, sir. You may proceed.

By Mr. Dunau:

Q. Now, looking at Page 3, of what is now Defendant Union's Exhibit No. 17, would you explain what is meant by the statement "No objection to settlement with the industry without night operations at a lesser wage scale"?

A. Simply that. If they wanted to settle at \$2 less a week, we had no objections.

Q. Do I understand you correctly—

A. (Interposing.) That is, if they were open at night, we expected that they would pay this scale.

Q. You were willing to pay more to be open at night, and you had no objection to the rest of the industry  
793 paying less on the wage scale if they did not open nights?

A. Yes. That is correct.

Q. That would be a very happy situation for Jewel, would it not?

A. That is correct, or we would hope so, at any rate.

794 Q. With the rest of the industry not operating at night, and Jewel operating at night?

A. If that should happen, but it did not happen with self-service.

Q. It did not happen with service?

A. I don't follow you.

Q. It didn't happen?

A. Well, I have no prior experience with service.

Q. What do you mean by Item 11, where it states, "No more favorable terms may be granted to any other operator for night market operations unless the same are extended to Jewel."

A. Just that. We did not object to them offering different terms; if we thought they were more favorable we wanted to be able to take advantage of them, but as long as they were not more favorable, well, that is it.

Q. You wanted Jewel to have the terms that were offered to any other employer?

A. Certainly.

Q. And that has been your position ever since 795 negotiations has begun or since you had participated in the negotiations?

A. Yes, sir.

Q. Has it been Jewel's position at all times, sir, that no employer is to have less favorable terms than any other employer?

A. I did not put it that way—"more favorable terms".

Q. No employer would have more favorable terms than any other employer?

A. That is right.

Q. So that uniformity of agreement was one of the objectives of Jewel?

A. Not necessarily, just not more favorable terms.

Q. You would not be unhappy if other employers had less favorable terms than you, but you would not permit other employers to have more favorable terms than you, and that is what it comes down to, isn't that correct?

A. We would endeavor—

Q. (Interposing.) And you would try to prevent that situation?

796 A. Well, I would say the "permit" is a pretty strong word.

Q. Isn't that written into the self-service contract at the present time?

A. Yes, sir, and I am the fortunate or unfortunate draftsman, whichever you see fit to call it.

Q. Didn't you draft that in the 1952 self-service agreement?

In other words, didn't you draft that in 1952, with the self-service agreement and when that was under the first negotiations?

A. Yes, sir.

Q. Didn't you, at that time, also draft the provision that if market operations in service departments were to be extended, the same expansion should be applicable to self-service markets?

A. Yes, sir.

Q. Now, still on November 1, 1957, did you and Mr. Morse, on behalf of Jewel, meet with Mr. Kelly?

Mr. Christensen: He testified to that.

Mr. Dunau: No, no, this is a separate meeting.

797 By the Witness:

A. A separate meeting? We made this offer at his offices, also.

Q. Yes, I know.

A. And I do not recall that anyone else was present, but I don't recall a later separate meeting. What I meant to say was that I do not recall who all else was present, but I certainly don't recall a later separate meeting.

Industry was not present when we first made the offer.

Q. I understand that, sir.

Now, will you please look at Page 6, sir, of your report to Mr. Hargrave of November 8, 1957?

Mr. Christensen: I did not hear you, counsel.

By Mr. Dunau:

Q. Will you please look at Page 6 of your report to Mr. Hargrave, of November 8, 1957?

A. Yes, sir.

Q. You referred, did you not, to an off the record committee conference with Mr. Kelly and Mr. Nielubowski?

798 A. Yes, sir.

Q. Does that refer to a meeting which was held later in the day after having seen Mr. Kelly in his office?

A. Yes, this was after the Union had joined the industry.

Q. So subsequent to the time that the Employer group and the Union group met, you had a further meeting with Mr. Kelly, is that right?

A. Well, this was a part of the further negotiations of the day, yes.

Q. But you were not meeting with the industry at the time you met with Mr. Kelly?

A. I don't think I was alone. I think I was with someone else.

Q. Mr. Morse was with you, was he not?

A. That is probably right, yes.

799 By Mr. Dunau:

Q. Mr. Vorbeck, do you now recall that your Mr. Morse and Mr. Kelly and Mr. Nielubowski met on November 1, 1957?

A. Yes, sir.

Mr. Dunau: Mr. Reporter, the spelling is N-i-e-l-u-b-o-w-s-k-i.

The Witness: I think that spelling is not quite correct.

By Mr. Dunan:

Q. Please correct it; I make no pretext of knowing 800 how to spell it.

A. I think it is N-e-i-l-u-b-o-w-s-k-i.

Q. Now at this meeting were you seeking to learn what to do to make Jewel's offer more acceptable to the Unions?

A. Yes, sir.

Q. And did Mr. Kelly tell you that he considered the Union's proposal unlivable?

A. He stated certain aspects of our proposal were unlivable.

Q. Was female wrappers one of the aspects that were unlivable?

A. Yes, sir.

Q. Was premium pay of 25 cents, which you were offering at night, unlivable?

A. Yes, sir.

Q. Mr. Vorbeck, at the meeting of the employer and the Union group on November 1st, towards its close, did Mr. Bromann state to you that if all the employers could agree on one night of operation that he would endeavor to induce his group to go along with such a proposition?

801 A. He did.

Q. Did you tell him that any offer that his group might make for one night of operation would be given serious consideration?

A. I am sure that I did.

Q. Did the next meeting of the employer group and the Union group take place on November 12, 1957?

A. Yes, sir.

Q. At this meeting—was there an employer caucus held?

A. Yes, but I wouldn't call it a caucus. There was considerable discussion among the employers.

Q. Did Mr. Kissell of IGA suggest a proposal to the employer group on night operation?

A. He had prepared one, and my notes contain it.

Q. What was his suggestion with respect to night operation?

A. His suggestion, which was never made to the Union, was two nights a week, Thursday and Friday, with the further qualification that if the holiday fell on Thursday, the opening night would then be on a Tuesday.  
802 Hours of 9:00 A.M. to 9:00 P.M., and all other days 9:00 A.M. to 6:00 P.M., no Sunday operations and no holiday operations.

He had quite a few other points, including the flexible work day.

Q. Did those other points pertain to various other subjects which would have to be agreed upon to conclude a satisfactory settlement?

A. Yes, sir.

803 Q. Now, during the discussion among the employer group on November 12, 1957, had Mr. Cone, of National Tea, prepared a proposal on behalf of all the industry except Jewel Tea?

A. He prepared it except Jewel Tea, but that wasn't the way it went.

Q. Correct, but the initial proposal prepared by him was one excepting Jewel Tea, is that correct?

A. That is correct.

Q. And as a result of the discussion held amongst the employer group, did you, on behalf of Jewel Tea, agree to go along with the industry proposal?

A. Yes, sir.

Q. And with respect to that proposal, did Mr. Bromann state that he would present it to his group on November 14, 1957, and report to the employer group on November 15, 1957, as to what his position would be?

A. Yes, sir.

. . . . .



804 Q. Mr. Vorbeck, I show you what has been identified as Defendant Union's Exhibit 18 for identification, a proposal made to the Union on November 12, 1957.

Do you recognize that as the proposal which was made on behalf of the industry on that date, excluding Associated Food Retailers, who was to take it back to its group to determine its position?

A. Yes, sir, this appears to be a Xerox copy or photostatic copy of my own notes.

Q. Now, was this proposal presented to the Union group at the meeting on November 12, 1957?

A. I think it was.

Q. Would you read what you have written at the upper left-hand margin on that proposal, sir?

A. (Reading:)

"Presented by R. H. Cone for the industry, except"

I will have to take it apart—I still can't read what  
805 the exception was. The punching on my notes has obscured it.

Q. Would the exception be Associated Food Dealers, which was going to take it to its group and report back?

A. It might well be, because later on in the heading we have excluded Associated Food Dealers.

Q. And the notation below the notation, sir?

A. "To be presented by Bromann to his group on the evening of Thursday, 11-14-57."

Q. Now, did the proposal of this pertaining to night operations, state that "Friday night meat operation effective December 2, 1957, male employee to be on duty during market operation"?

A. Yes, sir.

Mr. Dunau: I offer into evidence Defendant Union's Exhibit 18, for identification.

The Court: Any objection?

Mr. Christensen: No objection. Would you have him—as I understand this document, Mr. Dunau, it is sort of a continuing diary. Its offers were changed—he must 806 have worked from this from scratch, because it shows some of the items drafted on November 20th, and while he is at it—

I have no objection to the document, but I think it needs some explanation.

Mr. Dunau: You have no objection to its receipt?

Mr. Christensen: No. But I am asking these questions.

I would think that while we are on it, let's clear those things up.

By Mr. Dunau:

Q. Now, Mr. Vorbeck, on the first page of that document there is a set of wage rates opposite head meat cutter, journeymen, and self-service markets, and service markets. Were those the wage rates which were proposed on November 12th?

A. Yes.

Q. Now, then, in a set of wage rates opposite "apprentices," which has been crossed out, were the 807 crossed-out wage rates proposed on November 12?

A. I am inclined to think that they were not; that we increased those apprentice wage rates to the rates written out and not crossed out.

Q. So that the wage rates which are not crossed out are those which were proposed to the Union on November 12th?

A. That's right.

Q. The note is crossed out. Did that crossing out take place—

A. Prior to the presentation.

Q. Prior to the presentation?

A. Right.

Q. Now, opposite "4," there are wage rates opposite "female wrappers," which are crossed out, and then the

words "Two years," and wage rates at the right-hand margin which are not crossed out.

Were those the wage rates which the employers group agreed to propose?

A. The ones at the right are the ones actually proposed. They were modified as we actually discussed them.

808 Q. These were modifications which were made on Page 1 and then presented to the employers at their own meeting?

A. That is correct. That is a rather common practice.

Q. Very good. Now, on Page 2, sir, opposite 5, "Plus present amount of premium," is underlined, and then "12½ cents per hour."

Did you present that proposal to the Union on November 12th?

A. That was the then existing 6-day rate, 12½ cents premium. We did not change that at that point.

809 Q. This was just a classification—

A. That's right.

Q. (Continuing)—of what was presented by the employers' group to the Union group on November 12th?

A. Yes, sir.

Q. Very good.

Now, at the bottom, opposite 8, there are some words crossed out, and then the words "Effective December 2, 1957."

Was this, again, based upon discussions among the employers and then the presentation of this matter to the Union on November 12th, after approval?

A. Yes, we modified it before presenting it to the Union.

Q. Now, on Page 3, "Clean up time, self-service" is crossed out. Was that crossed out by the employer group prior to presentation to the Union?

A. I think it was.

Q. Then there is a notation opposite 11, "dropped

11-20-57," and crossed out. Was that a proposal which  
810 was retained by the employer group on November 12th,  
presented on November 12th, and then dropped in a  
meeting on November 20th?

A. Items 11, 12, 13, and I believe 17, were all formally  
presented on the 12th, and then subsequently dropped, on  
the 20th.

811 Q. Now, would you read the notation shown on the  
back of the last page of the proposal, sir, so that  
we may all know what that is?

A. Yes. This says, "Emmett said this offer is not  
as good as Kansas City. Parker answered, 'The dollar  
cost is about the same, all cost considered.' Ernest said  
the same (Kansas City offer was 5 and 4 and retained the  
employer insurance package) settled for 4 and 4 plus the  
Union's insurance package."

Apparently that refers to the Kansas City settlement  
that year.

That goes on and says, "Time off for death in the im-  
mediate family, three days; time off for jury duty".

That is all that pertains to that part, and then I made  
the further notation that "Glen Fishman of the Federal  
Mediation Conciliation Service had been assigned to this  
negotiation."

By Mr. Dunau:

Q. I offer Defendant Union Exhibit No. 18 into evi-  
dence.

Mr. Christensen: No objection.

812 The Court: It is admitted.

(Said document marked as DEFENDANTS' EX-  
HIBIT NO. 18 was received into evidence.)

By Mr. Dunau:

Q. Now, was there a further meeting held on November 15, 1957, between the Union group and the Employer group?

A. Yes, sir.

Q. On that day, sir, did Mr. Bromann say, on behalf of Associated, that he would go along with the industry's proposal for one night of operation, Friday night, beginning with the second year of the contract term?

A. They did before the negotiations were over, but they did not start out the day that way, no.

Q. But before November 15th was over, Mr. Bromann stated that he would go along with the industry's proposal for one night of operation on Friday night?

A. He stated that they would go along with the industry effective the second year of the contract, that they would agree to a Friday night's operation provided 813 that one-half of the market's personnel were on duty after 6:00 p.m.

Q. Now, you know that last part is incorrect, do you not, because that proposal was never made to the Union.

A. You may be correct, counsel. I am not sure—I beg your pardon—I am sure that was what we were informed in the Employer group.

I think that was the spot that I got confused on at the prior deposition, when you took my deposition, and I think you are correct.

Q. That the one-half complement was not a proposal ever made to the Union group?

A. No, sir.

Q. Did the Employer group, including Mr. Bromann, on November 15, 1957, propose to the Union group one night of operations on Friday night, a male employee to be on duty, sir, commencing with the second year of the contract term?

A. I am not sure about that meeting, sir. We made an

offer for Friday night, and whether the entire industry joined in it, I do not know.

814 Q. Mr. Vorbeck, I will read to you from your deposition, at Pages 226 to 227.

A. All right.

Q. And the question there is:

"Q. Well, but there was a proposal then on November 15, 1957, for night operations, which would either begin with the new contract term or at some future date after the commencement on the new contract term?"

"A. There was a proposal on November 15, 1957, I am positive of that."

"Q. To that effect?"

"A. Yes."

"Q. And Associated joined in that proposal with the rest of the industry, is that right?"

"A. I think they did."

Does that refresh your recollection as to whether Associated joined with the industry group on November 15, 1957?

A. I assume that they did. They joined with us at one point for one night of operation, so it must have been at this point.

816 By Mr. Dunau:

Q. Mr. Vorbeck, I show you what has been marked as Defendant's Exhibit 19, a proposal made to the Union on November 12th, with November 12th crossed out and 15 substituted, and with "excluding Associated Food Dealers" crossed out.

Is that the proposal which was made to the Union group on November 15, 1957, which included both the Associated and the rest of the employer group?

A. I think it is; yes, sir.



Q. And the x-ing out of that indicates that on that date they went along with the rest of the industry with the operation of one night operation, on Friday night, is that correct?

A. Yes, sir.

Mr. Dunau: I offer this into evidence.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 19.)

817 Mr. Dunau: Your Honor, I will have a copy for you. I don't seem to have one in my file.

Mr. Christensen: Would you let the witness see the exhibit?

Mr. Dunau: Yes, sir.

Mr. Christensen: Under "night operation" at the side, the margin next to "night operation," appears in pencil "12-2-57," and then the date "December 2, 1958" is scratched out, or 1957 is scratched out, and 1958 is written in.

Now, I cannot tell from these notes just what the sequence of those corrections or changes were. Can you—

Mr. Dunau: We will try to straighten that out, Mr. Christensen.

By Mr. Dunau:

Q. Mr. Vorbeck, do you recall that on November 15, 1957, the proposal which was made on behalf of the entire industry group, including Associated, was for Friday  
818 night operation beginning December 2, 1958, which would be the second year of the ensuing contract term?

A. I think we discussed making it December 2, 1958, in order to keep the Associated Food Retailers in line with the industry.

Whether it went in that way, I do not now recall.

Q. Do you recall whether this was the sequence of events, Mr. Vorbeck:

On November 15, 1957, the proposal was for night operations to begin the second year of a contract on December 2, 1958, but on November 20, which was the next meeting, the date went back from December 2, 1958, to December 2, 1957?

A. That's entirely possible, because of the change in position on the part of the Association.

Q. So that would you say that it is likely that on November 15, 1957, the proposal was for night operation to be effective on December 2, 1958, and that on November 20, 1957, there was an alteration of position, which we shall go into later, and part of the alteration was that night operation would be effective December 2, 1957?

A. I think it is likely. I just have no present recollection on why we did that.

Mr. Dunau: I offer this Exhibit 19. I believe it is in evidence. Has it been received?

Mr. Christensen: I don't think it has been offered yet, but I have no objection to it.

The Court: It has been admitted.

By Mr. Dunau:

Q. Now, on November 15, 1957, when the entire employer group was in agreement on a proposal for night operation on Friday night, what was the Union's position with respect to that proposal?

A. I am not sure if my time sequence is right, but I have a notation here that they came in about 3:30 and outlined a counter-proposal which made no provision for night operations.

Q. So that the counter-proposal in effect rejected the proposal of the one night for operation, Friday night?

A. Yes, sir.

Q. Mr. Vorbeck, did you explain to the Union group why

it would be illegal for a provision for market-operating hours to provide for market-operating hours from 9:00 A. M. to 6:00 P. M. Monday through Saturday, but not illegal to have a provision which provided for market-operating hours from 9:00 A. M. to 6:00 P. M. Monday, Tuesday, Wednesday, Thursday, and Saturday, and 9:00 A. M. to 9:00 P. M. on Friday?

823 By Mr. Dunau:

Q. The question was did you explain, that's all.

Mr. Christensen: The question is, did you explain.

By the Witness:

A. I did not.

Mr. Dunau: That's the answer.

Mr. Christensen: He answered my question, and your last question. That's all he answered.

By Mr. Dunau:

Q. Did a negotiating committee between the Union group and the Employer group take place on November 20, 1957?

A. Yes, sir.

Q. On that date, did Jewel, National Tea, Hillman's, High-Low and Piggly Wiggly continue to propose to the Union night operations for Friday night?

Mr. Christensen: Would you read those names again?

(Question read.)

By the Witness:

A. Yes, sir.

824 By Mr. Dunau:

Q. On that day, November 20th, did Kroger and A & P, Goldblatt's, IGA and Del Farms withdraw from their proposal for night operations?

A. Well, I don't know whether they withdrew. They abstained from the offer made by Jewel, National, Hillman's, Piggly Wiggly and High-Low, yes..

Q. So the proposal made by the five employers, Jewel National, Hillman, Piggly Wiggly, and High-Low, was not joined in by Kroger, A. & P, Goldblatt's, IGA, and Del Farms, is that correct?

A. Yes, that is correct.

Q. Did the Union group reject the proposal of Jewel, National, Hillman's, High-Low, Piggly Wiggly, for night operations on Friday night?

A. Yes, sir.

Q. Did the Union group present to the Employer group a proposal of its own on that date?

Mr. Christensen: Did it what?

By Mr. Dunau:

Q. Did the Union group present to the Employer group a proposal of its own on that date?

825 A. Yes, sir. It was presented as an answer to the Independents' offer.

Q. Was it presented as a proposal to be acted upon by the entire Employer group?

A. Knowing that Mr. Kelly wants uniform contracts, yes.

Mr. Christensen: Just a minute.

When you say "Independents" do you mean Associated Food Dealers?

The Witness: Yes, sir, that's the Independents.

By Mr. Dunau:

Q. Mr. Vorbeck, doesn't Jewel want uniform contracts?

A. We want contracts which don't grant more favorable operations to any other operator than Jewel.

826 By Mr. Dunau:

Q. I show you, Mr. Vorbeck, what has been identified as Defendant Union Exhibit 20 entitled, "Proposal of Union negotiating committee to industry, November 20, 1957," and ask you if that is the proposal made by Mr. Kelly to the entire Union group on November 20?

A. It is.

Mr. Dunau: I offer in evidence Defendant Union Exhibit 20.

Mr. Christensen: No objection.

The Court: Admitted.

(Said document marked DEFENDANTS' EXHIBIT NO. 20 was admitted into evidence.)

827 Q. The negotiations took place between the employer group and the Union group, based on the offer made by the Union group, did they not?

A. I'm not clear on that question. All negotiations took place on all offers that were made by both the employer group and the Union group.

Q. Was this offer made by the Union group on November 20th, sir, the basis for the agreement reached in the 1957 negotiations?

A. I don't know that the final agreement was identical to the Union's proposal. It may have been.

Q. I am sorry; I did not hear that last part?

A. It may have been.

Q. Would the variations have been minor, sir?

A. Probably. I think we were pretty close to the final agreement at that time.

Q. Now, on November 20, 1957, did Mr. Kelly ask each of the employers present what their position was on his proposal?

A. He certainly did. He polled us.

828 Q. What did Associated respond—Mr. Bromann, on behalf of Associated?

A. Mr. Bromann responded O. K.

Q. And Dell Farm?

A. I cannot find a notation opposite Dell Farm.

Q. Do you recall whether they agreed or disagreed?

A. I have no recollection. Just a minute, or just a second sir, and let me see if I can see if Dell Farm is represented on that date.

Yes, Mr. Meindel was there, and I think he must have concurred, but I have no notation as to what action he actually took.

Q. What did National Tea say?

A. National Tea said, "Deferred until Friday."

Q. They were deferring their action?

A. Yes.

Q. And what did A & P say?

A. The same answer.

Q. Deferred until Friday?

A. Yes.

829 Q. What did Kroger say?

A. Kroger said O.K.

Q. And IGA?

A. IGA said O.K.

Q. Goldblatts?

A. Goldblatts deferred until Friday.

Q. Hillmans?

A. Hillmans? No.

Then there is a further notation of "Limited to Chicago local Unions," and I believe Hillmans is not outside of the immediate metropolitan Chicago area.

Q. What was Sure Save's position?

A. No position indicated.

Q. Hi-Low?

A. Hi-Low was not represented.

Q. Wieboldts?

A. I want to say, on Hi-Low, that they were not rep-



resented at that time, or at the time this polling took place, which was at 7:45 at night.

Wieboldts said O.K. at this point.

830 Q. And Jewell?

A. No, and we stood by our offer of the morning.

Q. You say that some of the employers deferred their responses to Friday, and do you know what their responses were on Friday?

A. I am not sure whether they were on Friday or on what day, but I do know that Goldblatts and A&P ultimately expressed agreement.

National Tea later joined with us in a letter proposal or like proposal.

Q. Did ultimately all employers accept the Union's proposal made on November 20th, except National Tea and Jewell Tea?

A. I think Wieboldts objected at the very last moment, too.

Q. Then there were three employers who were objecting?

A. Yes, sir.

Q. Now, did you meet with Mr. Kelly at his office on November 22, 1957?

A. Yes, sir.

831 Q. Did you bring to Mr. Kelly or did you present to Mr. Kelly, rather, a proposal on behalf of Jewell Tea covering all subjects and providing for one night of operations on Friday night?

A. Yes, providing for one night of operations of all locals, except 189, and the Group 1 of 189, Friday night only.

Q. Did you ask Mr. Kelly to submit that proposal to the membership to be voted on by the members at the contract ratification meeting?

A. Yes, sir.

Q. Did Mr. Kelly state that he would present that proposal made by you to his members?

A. Yes, sir.

832 By Mr. Dunau:

Q. I will show you a letter dated November 22, sir, from you to Mr. Kelly, which has been marked as Defendant Union's Exhibit No. 21, and an offer made on November 22nd, or at least it is a paper entitled "Offer made November 22, 1957, on behalf of Jewel Tea, Incorporated," and that is marked as Defendant Union's Exhibit 21-A, and I ask you whether or not this letter and this offer was made to Mr. Kelly on November 22nd?

A. Yes, sir, they were.

Mr. Dunau: I offer Defendant Union's Exhibits 21 and 21-A into evidence.

The Court: They are admitted.

(Said documents, so offered and received in evidence, were marked DEFENDANTS' EXHIBITS 21 and 21-A.)

By Mr. Dunau:

Q. Now, does the proposal, which you presented to Mr. Kelly on November 22nd, provide for female wrappers as well as night operations?

833 A. Yes, sir.

Q. Did you make a telephone call on the morning of November 23rd to Mr. Kelly?

A. I don't know whether I did or whether he called me.

I know I talked to him about that time after this offer was in, and I think that was on a Saturday.

Q. In that telephone conversation, did you ask Mr. Kelly to submit to the membership, at the contract ratification meeting, the offer that Jewel made, including both night operations and female wrappers, but if that offer were

not accepted by the membership, to submit to the membership an offer confined to female wrappers?

A. Confined to female wrappers?

834 Q. Well, dropping night operations, but including female wrappers and the other items?

A. My recollection is very hazy on this.

I recall stating I have the answer to that on my deposition that we would drop—we would drop one or other of the items, but I thought it was just the reverse—the female wrappers rather than the nights.

835 Q. You were here during the course of the trial,

Mr. Vorbeck, at which Mr. Kelly testified that he had submitted to the membership Jewel's offer for female wrappers, plus night operations?

A. Right.

Q. Do you recall that? Do you recall that he also testified that he then submitted to his membership Jewel's offer for female wrappers without night operations?

836 Q. Mr. Vorbeck, at the present time do I understand you to state that you do not recall what the alternative offers were that you asked Mr. Kelly to submit to his membership?

A. That is correct. I got mixed up, and I don't  
837 recall them today.

Q. So that you don't now remember whether if Mr. Kelly's membership rejected the offer for female wrappers and night operations, whether the alternative offer was one for female wrappers only or for night operations only?

A. No, sir, I don't.

Q. Did you ask Mr. Kelly to inform you of the outcome of the contract ratification meeting?

A. Yes, sir.

Q. Was such a meeting of the membership held on November 24th?

A. I am sure there was. I wasn't there.

Q. Did you receive a telephone call from Mr. Kelly on November 24th?

A. I received one. I am not sure whether it was on the 24th or 25th.

Q. And what did Mr. Kelly say to you on the 24th or the 25th?

A. He told me that both of our offers—and I am sure there was a second offer, which was handled by telephone with Mr. Kelly—were rejected. What I am not clear 838 on is what it was.

Q. I understand, sir. Now, after you were informed that the membership had rejected both of the Jewel offers, did you on behalf of Jewel, either that day or the next day, inform Mr. Kelly that the Jewel was going to accept the agreement under the duress of a strike vote?

A. I was first informed that a strike vote had been taken. I think Mr. Kelly told me at the time, or if he didn't volunteer it, I think I asked for the information, and I am pretty sure that he told me that at the time. And subsequently we did decide—I am not sure on the date. I think we did it by letter—yes, we did by letter—accept the settlement under the duress of a strike vote.

Q. Now, Mr. Vorbeck, was the method that was employed for the negotiation, early negotiating the 1957 agreement, approximately the same method that is employed each year when a contract is negotiated?

A. Yes, with variations depending on the varying positions of the employers, and even some variations depending on Union demands.

839 Q. But the pattern?

A. The pattern is the same.

Q. As I understand it, each Local Union is represented at the negotiations by its officers, plus the business agents?

A. Yes.

Q. And would that amount to about 23 representatives on behalf of the Local Unions at these meetings, usually?

A. Not always that large a group. Always at the start, yes. They have them—every business agent appears to attend, and you can pretty well tell when the negotiations have reached a critical stage by the fact that they are back again.

Q. Now, has Mr. Kelly been the spokesman for the Union group, I believe you stated, for as long as you know?

A. All the years that I had been there he has been there.

Q. Now, does Mr. Kelly, to begin negotiations going, send a letter to the employers setting a date for the first meeting?

840 A. Yes. Frequently that—he sets the date for the demand meeting—

Q. That is the meeting—I am sorry, go ahead.

A. Then usually by mutual agreement, although not necessarily, the first meeting date would be agreed upon between the Union representatives and the Employers and he will announce it, because not all employers attend the demand meeting.

Q. So that the first meeting that he sets is one at which he presents to the Employer group the Union demands, and then the Employer group in common set a meeting to begin to negotiate the demands?

A. I would say that is correct.

Q. Now, does the Employer group designate a chairman or a spokesman to act on behalf of the Union group—I am sorry—designate a chairman or a spokesman to act on behalf of the Employer group?

A. To the extent that the employers can agree on the position to be taken, he speaks for all of us.

Q. Now, you had a single employer spokesman in 1959 negotiations, did you not?



A. Yes, sir.

841 Q. And a single employer spokesman in the 1960 negotiations?

A. Yes, sir.

Q. And when he takes a position he is speaking on behalf of all the employers, unless a specific employer says, "You are not speaking upon my behalf", is that it?

A. That is the understanding.

Q. So unless there is a specific disclaimer by a particular employer, what the chairman of the Employer group states is said on behalf of all the employers?

A. With one other exception. If the employer has no representative present in the negotiations, we normally do not speak for that employer.

Q. So that the chairman speaks upon behalf of those representatives who are present at the meeting?

A. That is correct.

Q. And unless a representative at the meeting specifically disclaims the position taken by the chairman of the Employer group, the chairman is speaking in his mind?

842 A. That is our intention.

Q. Very good.

Now, before the beginning of negotiations will the representatives of the Employer group meet amongst themselves to explore the objectives that they seek in negotiations?

A. Yes, sir.

Q. And during the course of negotiations will the Employer group caucus from time to time to determine what positions it should take in the course of negotiations?

A. We endeavor to.

Q. And does the Union group likewise caucus from time to time during the course of negotiations to determine the position the Union group will take in the negotiations?

A. I am sure they did.

Q. Now, when the Employer group and the Union group



reach agreement, are the terms of that agreement submitted to the membership of the Local Unions for ratification?

A. To the best of my knowledge, they are.

843 Q. When the membership ratifies an agreement, does one representative from each Local and one representative from each employer meet as a committee to draft the precise language to reflect the understanding that has been reached?

A. Yes. That's substantially correct.

844 Q. Now, when a draft in final form is agreed upon does Mr. Kelly send it to a printer to get a galley proof made?

A. Yes, sir.

Q. Does Mr. Kelly then send the galley proof to each of the employer representatives to check it over?

A. I don't know just to whom he sends it. He has always accorded me that courtesy.

Q. And are corrections made then, based upon—of the galley proofs, based upon either an employer representative or a union representative?

A. Yes, sir.

Q. When a galley is finally approved by the Employer and the Union group is the contract then set up in formal printed form?

A. Yes, sir.

Q. And do the employers and the Local Unions then sign separate but identical agreements?

A. In every instance to the best of my knowledge, with the exception, the single exception of Local 189.

Q. Local 189, at the conclusion of the negotiations, has problems of its own which still remain to be negotiated out?

A. Yes.

Q. So those are concluded at a time usually substantially later than the negotiations involving the other Unions?

A. We normally knock out an agreement within the next 30 days.

Q. At the conclusion of those 30 days approximately, an agreement is then drafted to reflect the understanding pertaining to Local 189?

A. Yes, sir.

Q. Now, prior to the ratification of an agreement by the membership, does each employer remain free to accept or reject the agreement that has been reached by the Employer group and the Union group?

A. I assume that you do. I certainly have always assumed I had the right to reject it on behalf of our company.

Q. And on behalf of your company, notwithstanding an agreement with the Union group and the Employer group, if you were dissatisfied you continue to negotiate an agreement to your liking, is that correct?

846 A. Somewhat. The die is pretty well cast. You know, it is a pretty hopeless proceeding to attempt further negotiations.

Q. Now, have agreements been uniform since the time you began to participate in negotiations in 1945?

A. I cannot speak with accuracy with respect from 1945 to about '52, although I think the answer should be substantially, yes. I don't know of any variations.

847 Q. And certainly from 1952 on, you are clear that there were no variations?

A. Clear with respect to self-service, which was then our primary interest, yes.

Q. From the time you started to assist Mr. Hargrave in negotiations, have negotiations been conducted on this joint basis, employer group and Union group meeting together?

A. Yes, sir.

Q. And of course you don't know what happened prior to the time that you began negotiating in 1945?

A. Just by hearsay.

Q. Now, prior to 1957, had Mr. Bromann acted as Chairman or Spokesman on behalf of the Employer group?

A. He never did at any session that I attended, except to represent his own individual group. I mean he might make a presentation on behalf of the Association, but I cannot ever remember him making a presentation on behalf of the entire industry.

Q. Are you saying that you don't remember that he did, or—

A. I don't remember that he did. It's possible.

848 Q. Now would Mr. Bromann be acceptable to the entire group?

A. Certainly. He is a very able negotiator.

851

Session of Monday, November 5, 1962.

GEORGE P. KOKALIS, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dunau.*

Q. Would you state your full name, please, Mr. Kokalis?

A. George P. Kokalis.

Q. Is that spelled K-o-k-a-l-i-s?

A. Yes, it is.

Q. Where do you live, Mr. Kokalis?

A. 3180 Lake Shore Drive.

Q. Here in Chicago?

A. Chicago.

Q. Did you operate a chain of stores known as Sure Save Food Marts in Chicago in 1957?

A. Yes, I did.

Q. Were you president of Sure Save?

A. Yes, I was.

Q. How many stores did you operate in Chicago in 1957?

852 A. Eight.

Q. Did you operate meat departments in these stores?

A. Yes, but not in all of them. We had some concessions.

Q. Now, did you operate four self-service meat departments?

A. Yes, we did.

Q. Did you lease three meat departments in your stores for service operation by others?

A. Yes, we did.

Q. And as to the last, the eighth store, was there a meat department in operation in that store?

A. It was a separate set-up completely. We had a common entrance, but what was it. We did not operate the meat department.

Q. And you did not lease your space?

A. No, sir, we did not.

Q. So that, as I understand it, you had four self-service markets in 1957, but you operated three service markets which you leased for operation to others?

A. Yes, sir.

853 Q. When did you begin the operation of Sure Save Food Marts?

A. 1947.

Q. And have you since sold that chain, sir?

A. Yes, I have.

Q. When did you sell it?

A. November of 1961.

Q. To whom did you sell it?

A. National Tea Company.

Q. Now, at the time you sold the chain how many stores were in operation?

A. Eleven.

Q. And in those eleven stores how many meat departments were operated on a self-service basis?

A. Ten.

Q. And did you operate a meat department in the eleventh store?

A. Yes, I did, but it was not self-service.

Q. Was it a service market?

A. Yes, it was.

Q. At the time that you sold the Sure Save Food Mart to National Tea, what was the annual dollar volume of meat that you purchased on behalf of Sure Save?

A. I would have to—I can't really answer that. All I can remember offhand would be the total volume of business, but I cannot remember the meat volume. I can give you an approximation. About, a little over four million dollars.

855 Q. Four million dollars?

A. Yes.

Q. That would be the approximate—

A. The approximate figure.

Q. (Continuing)—dollar volume of the meat?

A. That's right.

Mr. Christensen: Is that purchases or sales?

The Witness: Sales.

By Mr. Dunau:

Q. And that was an annual period, sir?

A. Yes, sir.

Q. Now, before you began to operate Sure Save, would you tell us what you did?

A. I was General Manager of Grocerland Cooperative in Chicago.

Q. What did you do as General Manager of Grocerland?

A. Well, that's a pretty broad job there. I did almost everything. Buying, selling, taking care of a number of



stores which at that time, when I left, were one hundred fifty-five.

Q. Did the buying entail purchases of meat?

A. No, sir.

Q. It did not?

A. No.

Q. How long did you occupy this position for Grocerland?

A. Nine years.

Q. Were you a member of Associated Food Dealers at the time you operated Sure Save?

A. Yes, we were.

Q. Were you a Director in Associated?

A. Yes, I was.

Q. Was the employment of butchers by you governed by a collective bargaining agreement by the defendant local Unions in this case?

A. Well, an agreement that was signed by the Association, but not by Sure Save.

Q. The employment terms were determined by that collective bargaining agreement?

A. Yes, sir.

857 Q. Were the market-operating hours of your stores determined by that collective bargaining agreement?

A. Yes, they were.

Q. In 1957 were you in favor of operating your meat departments after 6:00 P. M.?

A. Yes, I was.

Q. Based on your experience, Mr. Kokalis, would you please state whether in your opinion fresh beef, veal, lamb, mutton and pork can be sold in a self-service meat department between the hours of 6:00 P. M. and 9:00 P. M. without employees on duty?

A. I would have to give an answer to that based on my own company's thinking on the matter.



Q. Would you give us an answer based on your  
858 thinking on the subject, sir?

A. Well, the answer would have to be no.

Q. And why not, sir?

A. Because I feel that we have to take care of our customers at all times, particularly in the areas that we were in, merchandise by the consumer in a self-service counter would be so disheveled and disarranged that it would look very bad.

I would never approve of running our meat departments after those hours, or any hours, for that matter, without personnel on the job.

Q. Would stock become depleted if there were no personnel to replenish it?

A. Yes, I would think so.

Q. Would you be able to provide custom cutting for customers?

A. No, I would not, unless I have a man on the job.

Q. Do customers require help in the course of selecting meats?

A. Well, sometimes they do.

Q. Do they ask questions of the butcher as to what meats they should purchase?

859 A. Sometimes they do.

Q. And for what purposes?

A. Special cuts, or how to prepare meat items at times, and possibly the prices, and so on.

Mr. Dunau: No other questions.

*Cross-Examination by Mr. Christensen.*

Q. Mr. Kokalis, from approximately 1938 to 1947, you were the General Manager of Grocerland Coop?

A. Yes, sir.

Q. Prior to that time, what had you done?

A. I was in the retail business. I had a store at 5300 Lockwood and Irving Park.

Q. A grocery store?

A. Grocery and meats.

Q. Groceries and meats?

A. Yes, sir.

Q. How long did you run that?

860 A. From 1926 to 1943.

I was running the store while I was in the employ of Grocerland, for a period of time also.

Q. And before you had that store, what was your business experience?

A. Before 1926, sir, I was not in business. That was my first venture. I was going to school prior to 1926.

861 Q. You opened this store then, a small store, I take it?

A. Well, that was one of several stores that I opened as fruit and vegetable stores.

As years progressed we put in groceries, and then meats and so on.

Q. When did you first put in meats?

A. I believe it was in 1936.

Q. 1936?

A. That's right.

Q. Did you operate that meat department as a concession, or was it—

A. No, sir. It was my own meat department.

Q. That was a service department?

A. Service, yes, sir.

Q. When is the first time you had any experience with self-service meat departments?

A. In 1955.

Q. 1955?

A. Yes, sir.

Q. Approximately how much investment is required to set up a self-service counter?

862 A. As of now?

Q. Well, as of now or as of 1955?

A. I don't quite understand your question. To set up a counter or to equip a meat department?

Q. To equip a meat-department for self-service.

A. To equip a meat department?

Q. Yes?

A. Well, I would say it is between forty and fifty thousand dollars.

Q. It is a considerably greater investment than is required in a service department?

A. Yes, sir.

Q. Now, I take it there was a hiatus in which you were not in the grocery business yourself from approximately 1943 to 19—

A. To 1947.

Q. And 1947?

A. Yes, sir, four years.

Q. You sold out your store and you then, for the years 1943 to '47, was simply the general manager of Grocerland Cooperative?

A. Yes, sir.

863 Q. The Grocerland Cooperative was a buying organization, was it not, for a group of independents?

A. Yes, it was.

Q. And you did not buy meats, just groceries?

A. That's right. Groceries and produce, fresh fruits and vegetables.

Q. Now, have you ever had any experience of operating a self-service meat department without butchers being on duty?

A. No, sir.

Q. In a self-service meat department the prices are on every piece of meat that is on display, are they not?

A. Yes, they are.

Q. Unless a customer is illiterate it is not necessary for a customer to talk to a blessed soul about the price of

any of the products that are displayed for sale, isn't that correct?

A. I cannot answer that, no, because there is confusion sometimes between the weight and the pricing on the packages. So there are questions asked on occasions. I 864 would not say that all the customers would do that.

Q. Mr. Kokalis, doesn't every piece of meat have a price on it?

A. Yes, it does.

Q. And it has got a dollar sign or a cent sign in front of it, has it not?

A. Yes, it has. Yes, it has.

Q. Now, your opinion as to what would happen in a meat department, self-service meat department that is operated without butchers being on the premises is purely your speculation as to what would occur if such an event happened, is it not?

865 By Mr. Christensen:

Q. Isn't that right? You have never seen a department in operation, you have had utterly no experience as I understand your testimony—

A. That is correct.

Q. (Continuing)—and your opinion therefore, is far less valuable than that of men who have actually witnessed such an operation, isn't that correct?

A. That would be so.

Q. Now you say you think a meat department might become depleted, you testified. You have never seen that occur, have you?

A. I have seen it occur during the day, even when butchers are on.

Q. You have never seen it while butchers were not on duty?

A. Because we have never operated such a store.

Q. Whether it would become depleted would depend in part upon the judgment of the manager in stocking the case before the butchers went off duty, wouldn't it, as to how heavily he stocked it?

866 A. Well, you could still be out of merchandise if there was any business being done after 6 o'clock.

Q. Well now, Mr. Kokalis, let me give you an opportunity to think about that again.

Q. If he put two steaks in there and the only business done after 6 o'clock was one steak, the case would not be depleted, would it?

A. Well, to my way of thinking it would be.

Q. It would be depleted by one steak?

A. Because the choice is not there as far as the customer is concerned.

Q. If you put five in and one was taken out, the case would not be depleted, would it, except by one steak?

A. Well, again there is a difference of opinion from the standpoint of how I would want my store stocked.

Q. I didn't ask you how you wanted your store stocked.

A. My thinking would be that it is depleted if it only had five steaks in there.

Q. The minute one steak is taken out it is depleted 867 by that much?

A. That's right, because five steaks in the first place, would not be enough.

Q. How many would be enough?

A. Well, twelve, fifteen.

Q. Fifteen?

A. That's right.

Q. Now, in the operation of any stores you operated, the minute one—and I am assuming that it was fifteen steaks in there—the minute one steak was taken out did your butcher run back and get another one?

A. No.

Q. So you are willing to suffer a minor amount of depletion with butchers on duty, aren't you?

A. Yes, I am.

Q. All right, that answers it.

Now, in the time you operated Sure Save from 1947 to 1961—

A. Yes, sir.

Q. (Continuing.) —was all of the dealing Amalgamated Meat Cutters Unions with respect to night operations conducted on your behalf by Mr. Bromann of the 868 Associated Food Dealers, or did you sometimes participate?

A. I sometimes participated myself.

869 Q. What years did you participate yourself, Mr. Kokalis?

A. I can't recollect, except that I know I was there, I think, in '56, '57, and '58. And not all of the meetings; on occasion.

Q. You think you were there in 1956?

A. And I know I was there in 1957.

Q. In '57?

A. Yes, and '58.

Q. And in '58?

A. Yes, sir.

Q. Now, who else was present in '58?

A. I can't remember, really.

Q. Anyone?

A. Mr. Bromann was, and I think from the chains, Jewel Tea was represented, A & P was represented, Kroger was represented, Hi-Low was represented.

870 Q. Now, in 1957, did you wish to have night operation in your meat departments?

A. Yes, I did.

Q. Did you tell Mr. Bromann you wished to have it?



A. Yes, I did.

Q. Did Mr. Bromann tell you he couldn't make a fight for it?

A. I don't remember his exact words; no, sir, I do not. I know that we went in and talked about night operation, and Mr. Bromann was in accord with it.

Q. And do you recall that a vote was taken amongst the employer members?

A. I'm sorry, I can't recollect the vote.

872 Q. You have said that you favored night operations?

A. Yes, sir.

Q. Did you keep that mental state locked up in yourself, or did you communicate that view to someone?

A. I communicated it to the entire body, if I remember correctly.

Q. Did you communicate it to Mr. Bromann?

A. Yes, I did.

Q. Did you communicate it to Emmett Kelly?

A. Yes, I did.

Q. And did you ask Mr. Bromann to act as your agent in securing—

A. Yes, I did.

Q. (Continuing.) —night operations?

A. Yes, sir.

Q. Did you vote for or against night operations in a poll?

A. I voted for night operations.

873 Q. When you told Mr. Bromann that you favored night operations, did he make any response to you?

A. Well, if I remember correctly, he said that—he must have made some response, naturally, but I cannot recollect verbatim the words that he said, except that it would be a hard thing to sell to the independent merchants, the one-store operators.

Q. Yes. He had told you that before, hadn't he?

A. Yes, sir.

Mr. Dunau: If your Honor please, we are again going outside the scope of the direct examination.

The Court: Sustained.

Mr. Christensen: That's all.

*Redirect Examination by Mr. Dunau.*

Q. Mr. Kokalis, you stated that you participated in the 1958 negotiations. Was the 1957 agreement a two-year agreement?

A. Yes, it was. But I think there was some meetings, anyway, that came up. I can't remember, because I 874 just have been too busy with other things, too, and I didn't devote all of my time to these meetings. I didn't go to all the meetings.

Q. But you do recollect that you participated in the 1957 meetings?

A. Definitely.

Q. And you participated in the negotiations which took place after 1957?

A. Yes, I did.

875 Q. And you participated in negotiations which took place before 1957?

A. I think I did. In '56 was my first participation.

Q. Now, you answered Mr. Christensen that you voted yes in a poll for night operations. Would you tell me when this took place?

A. '57, but I can't recall when, what night or what date.

Q. Do you mean, when you said you voted yes, that in a discussion amongst the employer group concerning whether to propose night operations, you favored that position?

A. That's right.

876 *Recross Examination by Mr. Christensen.*

Q. In the '57 negotiations, Mr. Kokalis, when you attended those sessions, I assume you did the speaking for your chain, for Sure Save?

A. Yes, I did.

Q. Now, who spoke for Sure Save when you were not present?

A. Mr. Bromann.

Q. Mr. Romann?

A. Yes, sir.

877 SAM POLLACK, a witness called on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dunau.*

Q. Would you state your full name, please, sir?

A. Sam Pollock, P-o-l-l-o-c-k.

Q. Where do you live, Mr. Pollock?

A. In Akron, Ohio.

Q. Is your present position president of District Union 427, Amalgamated Meat Cutters and Butcher Workmen of North America?

A. It is.

Mr. Christensen: District Union, you call it?

Mr. Dunau: District Union; that's right.

878 By Mr. Dunau:

Q. Is it also known as Local Union 427?

A. Yes.

Q. Why is it called District Union 427?

A. Because we cover more than one locality. Our jurisdiction extends over a number of counties in Northeastern Ohio.

Q. Have you held the position of president of District Union 427 since 1952?

A. Yes.

Q. What was your position before 1952?

A. I was international representative for the Amalgamated Meat Cutters and Butcher Workmen of North America.

Q. For what period of time did you occupy that position?

A. Approximately fourteen years.

Q. Between what years?

A. Between 1941 and 19—

Q. 1952?

A. Well, I was international representative from 1938 to 1952, but there was a period of two years when I 879 took a leave of absence from the international to accept a Local Union position with the Akron Local in Akron, which subsequently merged with Cleveland, and then we became a District Union.

Q. Now, during your two year period when you were business representative of the Akron Local, was that during the years 1939 to 1941?

A. Yes.

Q. Does District Union 427 engage in collective bargaining with a group known as Cleveland Food Industry Committee?

A. Yes.

Q. Would you state what employers compose Cleveland Food Industry Committee?

A. Fisher Foods, Pick and Pay, Kroger Company, Stop and Shop, Buy Right, Heineman's, Cleveland Food Dealers Association, representing the Independents.

Q. Cleveland Food Dealers Association represents the Independents?

A. That's right.

Q. And the others are the chain store operations?

A. Yes. Either local, regional, or national chain  
880 operations.

Q. But that is more than one store?

A. Right.

Q. What geographical area is covered by the Cleveland Food Industry Committee?

A. Cuyahoga County.

Q. Would you spell that, please?

A. C-u-y-a-h-o-g-a.

(Continuing)—Lorain.

Q. L-o-r-a-i-n?

A. That is right.

Lake, Ashtabula,

Q. A-s-h-t-a-b-u-l-a?

A. Yes. And Medina County.

Q. Medina?

A. Right.

Q. Now, how about another county called—I can't spell  
it.

A. G-e-a-u-g-a.

Q. Now, are those the counties which are covered by the  
group known as Cleveland Food Industry Committee?

881 A. It is.

Q. Well, state the cities which are located within  
Cuyahoga County.

A. Well, Cleveland, Ohio. There is east Cleveland,  
Parma, Shaker Heights. Approximately, as I recall, six  
or seven which have city status under, you know, accord-  
ing to Ohio law, and approximately fifteen to twenty other  
communities located in Cuyahoga County.

Q. What is the approximate population of Cuyahoga  
County?

A. Well, approximately one and one-half million.

Q. Now, does District Union 427 bargain on behalf of

Meat Cutters in the meat departments located within the geographical area covered by the Cleveland Food Industry Committee?

A. Yes.

Q. Does Retail Store Employees' Union Local 880 engage in collective bargaining with the Cleveland Food Industry Committee?

A. Yes.

Q. Does Local 880 bargain on behalf of all store employees except the meat department employees and 882 supervisors?

A. Yes.

Q. Would you tell us how the collective bargaining between District Union 427 and the Cleveland Food Industry Committee is conducted?

Mr. Christensen: I am going to object. I haven't at this point. I don't see the materiality of this.

The Court: Yes, what is the relevance of this?

885 The Court: He may answer.

By Mr. Dunau:

Q. The question was, Mr. Pollock: How was the collective bargaining by the District Union 427 and the Cleveland Food Industry Committee conducted?

A. Membership select a committee representative of the various companies with which they deal. The employers select a committee from among themselves, representing the various operators, as I mentioned previously, and then we meet for the purpose of negotiating a stand- 886 ard industry agreement which will apply generally throughout the jurisdiction that we cover in our negotiations with these employers.

Q. Is the collective bargaining between Local 880 and the Cleveland Food Industry Committee conducted in the same way?



A. Precisely.

Mr. Christensen: Well, now, just a minute. I am going to object unless he is present. Let's forget the grocers for a minute. This man is a meat man.

By Mr. Dunau:

Q. Are you familiar with the way Local 880 conducts its bargaining?

A. Yes.

Q. Are you sometimes present?

A. Yes.

Mr. Dunau: May he answer the question?

The Court: He may.

By Mr. Dunau:

Q. Is the collective bargaining between Local 880 and Cleveland Food Industry Committee conducted in the same way as collective bargaining between District Union 427 and Cleveland Food Industry Committee?

A. Precisely.

Q. Are the market operating hours of the meat departments in Cuyahoga County determined by the collective bargaining agreement between District Union 427 and Cleveland Food Industry Committee?

A. It is.

Mr. Christensen: May I have a standing objection to the materiality and relevance of this?

The Court: You may.

888 By Mr. Dunau:

Q. What are the hours of the meat department—the meat department operating hours in accordance with the collective bargaining agreement?

A. Well, the collective bargaining agreement provides that the operating hours, the working hours, shall be between nine and six, Monday, Tuesday, Wednesday and

Thursday; eight to six Friday and Saturday; closed all day Sunday.

890 Q. Mr. Pollock, I show you what has been marked Defendant Union's Exhibit 23, entitled "A contract between Retail Store Employers, Union Local 880, and the Cleveland Food Industry Committee" for the period September 4, 1961 to September 1, 1963, and ask you whether that is the copy of your current agreement?

A. It is.

Q. I show you what has been marked as Defendant Union's Exhibit 22, entitled "An Agreement between Local Union 427; Amalgamated Meat Cutters and Butchers of North America and the Cleveland Food Industry Committee," from September 4, 1961 to September 1, 1963, 891 and ask you whether that is a copy of your current agreement?

A. It is.

892 *Cross-Examination by Mr. Christensen.*

Q. Mr. Witness, as to Exhibit 23, the Retail Stores Employees' Union, that is not with your Union, is it?

A. Retail Stores Local 880 is Retail Clerks. That is not our Union.

Q. And you never signed this contract nor negotiated it, did you?

A. I did not sign the agreement. I have sat in at various times of the past several years during negotiations and assisted in negotiations for Local 880. They, in turn, sat in on our meetings and assisted Local 427.

893 Q. You did not participate in the negotiations that led to this contract, this past August, did you?

A. If you mean by "participation," did I sit in on any of the negotiations—

Q. Yes?

A. My answer is yes, I did. If you are talking about the—

Q. Just a minute.

A. I did not execute the contracts.

Q. Just a minute.

What date did you sit in on the negotiation when those negotiations leading to this September 4th contract took place?

894 A. Oh, I imagine during the most of July and August, possibly.

Q. Where did they take place?

A. In Cleveland, Ohio.

Q. Whereabouts?

A. Well, several places. They would take place at the Fisher Foods office sometimes. They took place at the Statler Hotel sometimes, and I think on one or two occasions at the Carter Hotel.

There might have been some—there probably were about twenty sessions, and I may have sat in on one or two of them.

Q. Which one did you sit in on?

A. Oh, I wouldn't recall just precisely the date.

Q. Where, where?

A. My recollection is the Carter Hotel.

Q. You were at the Carter Hotel?

A. I think that was one of the sessions I sat in on.

Q. You think? You have no real recollection of it, have you?

A. I have a good recollection that I sat in on a 895 meeting.

Q. All right. Now, if you have a good recollection that you sat in on a meeting of the Grocery Clerks' Union, with the Cleveland Food Industry, where does that good recollection tell you that meeting took place?

A. My best recollection is that it took place at the Carter Hotel.

Q. And when?

A. Sometime during the month of August.

Q. 1961?

A. That is right.

Q. That is something over a year ago?

A. Yes.

Q. And what was discussed that day?

A. I think the application of available hours and health and welfare.

Q. Health and welfare?

A. Yes.

Q. Who spoke on the subject of application of available hours?

A. Well, I probably did, because I clarified its 896 application of how it would operate.

Q. Mr. Witness, please don't say probably. If you don't recall, say so.

A. Well, I spoke on health and welfare, specifically. I think I spoke on the available hours clause.

Q. But you are unwilling to make your oath to it? You just say you think so?

Q. You are unwilling to make your oath that you talked on anything other than health and welfare, are you not?

A. Mr. Christensen, I spoke on many issues during these negotiations.

Q. Mr. Witness, please.

A. And during the—

Q. Please, please.

897 The Court: Listen to the lawyer.

By Mr. Christensen:

Q. You just have a single question, and if I want a speech, I will ask for it.

Now, are you willing to say that on this day in August you talked in the meeting of this particular group leading to this particular contract, you spoke about anything other than health and welfare?

A. To my best recollection I spoke on health and welfare and availability, available hours clause.

Q. All right. Now, who did you speak to?

A. To those that were present.

Q. Who was there?

A. To my best recollection a sub-committee of the Cleveland Food Committee, consisting of Mr. English of Fisher Foods and I think a Mr. Bedell Smith—Mr. Bill Bedell, I'm sorry, myself, Mr. Dunlap—I don't recall who else was there from his organization.

This is, to my best recollection, among the people that were there. At least they were present.

898 Q. That year who concluded their agreement first, you or the—by "you," I mean the Amalgamated, or the Retail Store employees, Retail Clerks?

A. I think we concluded our agreement first. I would not—I'm not altogether positive about it, but I think we concluded first.

Q. Had you concluded your agreement by the time this meeting was held in August?

A. Substantially, I think we had concluded. We may have had an area or two that we had to finalize, and did not yet finalize at the time this meeting was held.

So far as the Meat Cutters, I think we were pretty much in substantial agreement at that time, with possibly some fine points yet to be ironed out.

Q. You were a visitor at this meeting, were you not?

A. We generally characterized it as "observer."

Q. As an observer?

A. That's right.

Mr. Christensen: Well, I have no objection to the 899 documents.

The Court: They are received.

(Said documents, so offered and received in evidence, were marked DEFENDANT UNION'S EXHIBITS 22 and 23.)

900 *Further Direct Examination by Mr. Dunau.*

Q. Mr. Pollock, will you state the store operating hours which are observed outside Cuyahoga County?

A. In Lorain, Lake and Ashtabula County, the hours are 9 to 6, Monday, Tuesday, Wednesday and Thursday; 8 to 9 on Friday; and 8 to 6 on Saturday.

In Medina County they are 9 to 6 Monday, Tuesday and Wednesday, 8 to 6 Thursday and Friday and 8 to 6 on Saturday.

I am sorry, 9 to—no, 8 to 6 Thursday and Friday and 8 to 6 on Saturday. I will correct myself.

Mr. Christensen: It doesn't make sense.

The Witness: No, 8 to 9 Thursday and Friday and 8 to 6 on Saturday.

By Mr. Dunau:

Q. Now, outside the meat departments, are the store operating hours in Cuyahoga County determined by the collective bargaining agreement between Local 880 and the Cleveland Food Industry Committee, disregarding the meat department and considering the rest of the store? Are the store operating hours in Cuyahoga County determined by the collective bargaining agreement between local 901 880—

Mr. Christensen: This is outside of Cuyahoga County?



Mr. Dunau: No, disregarding the meat department, the rest of the store within Cuyahoga County.

By Mr. Dunau:

Q. Are the store hours determined by the collective bargaining committee between the Union and the—well, what are the hours?

A. In Cuyahoga County they are 9 to 6 Monday, Tuesday, Wednesday and Thursday, 8 to 6 on Friday, and Saturday.

Q. Now, does the collective bargaining agreement between Local 880 and the Cleveland Food Industry Committee also govern store operating hours outside of Cuyahoga County?

A. Yes.

Q. And are the stores outside Cuyahoga County the same hours you have just described with respect to Local 427?

902 A. Precisely.

Q. For how long has this condition of store operating hours existed in the geographical area covered by the Cleveland Food Industry Committee?

A. Well, with the Cleveland Food Industry Committee—they came into existence possibly 1945-46. At that time, as the Food Industry.

Prior to this it was with the same people in the Food Industry, but not in the Food Industry negotiations.

Q. Let me ask you this: Have the store operating hours which you have described, have they existed in precisely the same way as they now exist since 1952?

A. Since '52, yes.

Q. What was the situation before 1952?

A. The store hours prior to 1952 were 9 to 6 Monday, Tuesday and Thursday, 9 to 1 on Wednesday, 8 to 6 Friday and Saturday.

Q. You are now describing the hours in Cuyahoga County?

A. Yes.

903 Q. Outside of Cuyahoga County were the hours before 1952 approximately what you have answered with respect to the current situation?

A. Yes, except that they also observed 9 to 1 on Wednesday, but they had 8 to 9 on Friday.

Q. I see.

A. With the exception of the one county which had 8 to 9 two nights.

Q. Which counties was that, sir?

A. Medina.

Q. Now, in the geographical area which is presently covered by the Cleveland Food Industry Committee, do the meat departments operate on both a service and a self-service basis?

A. They do.

Q. Would you tell us which is the more prevailing method of operation?

A. Well, the prevailing method is the self-service operation.

Q. How many Meat Cutters are covered by the collective bargaining agreement between District Union 427 and the Cleveland Food Industry Committee?

904 A. Approximately thirty-two hundred.

Q. Within the geographical area that the Cleveland Food Industry Committee covers, are all butchers who work for employers represented by District Union 427?

A. Yes.

Mr. Christensen: Would you read that question and answer, please?

(Question and answer read.)

Mr. Christensen: Work for—

Mr. Dunau: Work for employers.

Mr. Christensen: All employers?

Mr. Dunau: Yes, sir, all employers.

By Mr. Dunau:

Q. That is correct, is it not?

A. Yes.

Q. Now, within the geographical area of the Cleveland Food Industry Committee, are all store employees except those in the meat department and supervisors represented by Local 880?

Mr. Christensen: I am going to object to this. This goes so far—he cannot possibly know every corner grocery, can he?

905 He cannot claim—

Mr. Dunau: I withdraw the question.

By Mr. Dunau:

Q. Are there a number of stores within the same area, within the area which is covered by District Union 427, in which the grocery clerks are not organized by a Union?

A. Yes.

Q. And is the situation in those stores that the meat department is represented by District Union 427, and the grocery clerks are unrepresented?

A. Yes.

Q. About how many such stores are there?

A. To the best of my knowledge at the present time, some six in Cuyahoga County.

906 Q. What, in those stores in which your grocery clerks are not represented by a Union, what is done with respect to meat sales in the meat department after 6:00 P.M.?

A. The total operation closes down and they observe the standard industry conditions of 9:00 to 6:00, the six days that I mentioned, and closed all day on Sunday.

Q. When you say "the total operation," you mean the total operation in the meat department?

A. Meat department, yes.

Q. Is there a sign posted in those stores concerning the closing at 6:00 P.M.?

A. Yes.

Q. What is that?

A. Well, the sign that is posted says that by agreement with the meat cutters' District Union 427, the following hours of operation are to be observed, and customers are requested to do their shopping accordingly.

I am not quoting it exactly. I don't know just what the sequence is. And the hours, 9:00 to 6:00, are specifically stated.

Q. Are the meat counters covered with paper at 6:00 P.M. in those stores?

A. Yes. They pull the lights and cover the cases. Sometimes they cover them with cloth, most often with the brown wrapping paper.

Q. Now, does the Great Atlantic & Pacific Tea Company operate in the same geographical area which is covered by the Cleveland Food Industry Committee?

A. Yes, yes.

Q. Does District Union 47 represent the meat cutters of A&P in this area?

A. Yes.

Q. Does Local 880 represent the grocery clerks of A&P in this area?

A. Yes.

Q. Describe how the collective bargaining agreement with A&P is conducted?

Mr. Christensen: Your Honor, if it please the Court, you have ruled that he may show general conditions, but to get into collective bargaining between a specific employer and—

The Court: How important is that?

Mr. Dunau: Just to fill out with the one employer, A&P who was not embraced in the remaining group.

The Court: All right, shorten it up.

By Mr. Dunau:

Q. Describe how the bargaining committee with A&P is, sir?

A. The union selects a committee to represent the employees, and the employees, through their representatives, meet with us and negotiate a contract.

Q. To the collective bargaining agreement with A&P?

A. They do.

Q. Are the same operating hours observed by the A&P as observed by the Cleveland Food Industry Committee?

A. They are.

Q. How many meat cutters does A&P employ in 909 the area covered by the Cleveland Food Industry Committee?

A. Approximately between 450 and 500.

Q. What is the reason that Local 47 and Local 880—  
Mr. Dunau: No, strike that.

By Mr. Dunau:

Q. What is the reason that Local 47 includes, in the collective bargaining agreement, limitations upon store-operating hours?

Mr. Christensen: I will object to that as endeavoring to contradict the terms of a written instrument.

Mr. Dunau: In what way?

Mr. Christensen: There is no provision in here restricting store-operating hours.

915 Mr. Dunau: If your Honor please, I have had marked as Defendant Union's Exhibit 24 for identification a charge of the Court in *Spilka vs. Retail Store Employees Union Local 880 and Amalgamated Meat Cutters and Workmen of North America, Local Union 427*.

The particular parts of that charge which are relevant

to this proceeding appear at the Pages 36 to 37, 49 and 57 to 58.

At 36 to 37, the charge is:

"You are further instructed that the subject matter involved, namely the accord between an employer and the Unions as to working conditions, hours of work and store closing hours, that is consummation of a collective bargaining agreement, is a lawful subject matter upon which competent persons may contract one with the other."

At page 49, the charge reads:

"You are instructed, as a matter of law, that the right of a Union to picket or strike and protest against a violation of store hours or in support of a demand that an employer comply therewith or to secure a contract with an employer to abide by certain closing hours prevalent in an industry, is a lawful objective recognized in the law, which is circumscribed only by the requirement that the picketing be peaceful."

At pages 57 to 58:

"I instruct you as a matter of law that a Collective Bargaining Agreement represents an accord or understanding between an employer or group of employers and a Union which is legally enforceable, and that the inclusion of such an agreement of provisions which permit night operations and hours of employment after 6 o'clock P. M., in counties outside of Cuyahoga County, while by agreement placing limitations or prohibitions on night operations in Cuyahoga County for the same employers, is not prohibited by law and a strike against a Cleveland employer to obtain an agreement in conformity with Cuyahoga County hours of operation is a lawful objective for which the strike may be maintained."



920 The Court: I think that is a reasonable compromise. It will not be received in evidence. However, the excerpts you read is a part of the record.

921 THOMAS F. GORMAN, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dunau.*

Q. Will you state your full name, sir?

A. Thomas F. Gorman.

Q. Is that G-o-r-m-a-n?

A. It is.

Q. What is your address, please?

A. 7816 South Phillips.

Q. What is your present position with Local Union 546?

A. President of Local 546.

Q. In what year did you first begin working as a meat cutter?

A. August of 1910.

Q. How old were you at that time?

A. I was 19.

Q. How old are you now, sir?

A. The Lord willing, I will be 71 two weeks from today.

922 Q. Now, in 1910, when you first began working as a meat cutter, did you begin as an apprentice?

A. Yes, I did.

Q. For whom did you work at that time?

A. My mother.

Q. Did your mother operate a meat department?

A. She had a grocery and a meat—she bought the meat market next door. I worked in the market next to the grocery.

Q. Did your mother employ other butchers?

A. Yes, she did.

Q. About how many others?

A. Well, always one with me.

Q. That would be two with you?

A. Two.

Q. Two together, that is, counting you?

A. Yes.

Q. Now, how long did you continue to work in that store for your mother?

A. I worked there from 1910 to 1921.

Q. And what happened after 1921?

A. We sold the business there and then opened an exclusive meat market at 6853 South Wentworth.

Mr. Christensen: 68—

The Witness: 53.

By Mr. Dunau:

Q. South Wentworth?

A. That's it.

Q. And how long did you stay at that store?

A. Well, we stayed at that address six years, and we moved to a more advantageous point across the street, to 6909 Wentworth, and we were there to 1933.

Q. And what happened in 1933?

A. Victim of the depression.

Q. What did you say, sir?

A. We were a victim of the depression.

Q. What happened as a result of being victimized by the depression?

A. Well, we moved the fixtures out of there to this building that my mother had at 5013 South Halsted, and set it up as a market and rented it out as such.

Q. What did you do?

A. I went to work at National Tea.

Q. As what?

924 A. Market manager.

Q. Meat market, sir?

A. Meat market manager.

Q. How long did you work for National?

A. Two years.

Q. Then what happened?

A. I went to manage a market at 227 East 79th Street, known as a packing house market.

Q. How long did you work at that?

A. Till 1940.

Q. And what happened in 1940, sir?

A. I went to work for Jewel Tea, then.

Q. And how long did you work for Jewel Tea?

A. Four weeks.

Q. In what capacity?

A. As a journeyman meat cutter.

Q. And at the end of the four weeks what happened?

A. I went into the office of Local 546.

Q. At what job?

A. Special investigator.

Q. And what was the work of the special investigator?

A. That special investigator was to check up on 925 shops to see if the men were observing the hours, getting the proper pay. I visited the sick, and anything I was called upon to do.

Q. And how long did you work as a special investigator?

A. Until March of 1941. And one of our business representatives, Mr. Harry Berger, was stricken with a fatal illness, and I was put out in his territory.

Q. Doing what?

A. Well, my title was still special investigator, but I was doing the work of a business representative.

Q. And how long did that continue?

A. It continued—after a short period of time I was recognized as a business representative, and I was out on a different section of Chicago, Northwest side and South side and in 1951, I became president of the Local.

Q. And you have been president since 1951?

A. I have.

Q. Now, in 1910, when you first started working as an apprentice meat cutter, will you tell us what the store 926 operating-hours of meat departments were in Chicago?

A. From 7 A. M., to 7 P. M., Monday through Friday, and 7 A. M., to 9 P. M., on Saturday, and 7 A. M. to 1 P. M., on Sunday.

927 Q. Now, on Saturday, was it 7:00 A. M. to 9:00 P. M., or 7:00 A. M. to 10:00 P. M.?

A. I want to stand corrected. 7:00 A. M. to 10:00 P. M. is correct.

Q. On Saturday?

A. On Saturday.

Q. And did the butchers work throughout the full hours of the store operation?

A. Oh, yes.

Q. In other words, a butcher would work from 7:00 to 7:00 Monday through Friday, 7:00 to 10:00 on Saturday, and 7:00 to 1:00 on Sunday?

A. That is correct.

Q. How long did these hours continue?

A. They continued until November of 1919.

Q. Now, in what year was Local 546 formed?

A. In 1914.

Q. And what was its territorial jurisdiction?

A. Well, just that it was formed—we of the South Side recognized it as a South Side local, but it kept expanding until it took in its present territory. In fact, 928 at that time it took in suburbs on the west, that we no longer represent.

Q. Was it at least as large then as its present territorial jurisdiction?

A. Yes, about the same.

Q. Did Local 546 call a strike of the meat cutters in Chicago on November 1, 1919?

A. That's right.

Q. Now, when the strike was called on November 1, 1919, did you and your mother receive a visit at your store from officials of Local 546?

A. Yes. Two men.

Q. Who were they?

A. A business representative named Charles Rutter and a gentleman whom I met for the first time, known as Michael Kelly.

Q. How do you spell the Rutter, sir?

A. It is spelled R-u-t-t-e-r.

Q. Is Michael Kelly the father of the present defendant, Emmett Kelly?

A. He is; he was.

929 Q. What conversation took place at the store between your mother and Mr. Kelly?

930 A. Yes. Mr. Rutter and Mr. Kelly came into our store. At that time it was a combination store. We had moved the market into the grocery, and knowing  
931 Mr. Rutter, my mother said—

—my mother said, "What is wrong, Charlie?"

He said, "Well, we want more money and less hours."

And she said, "I am in perfect agreement with that."

And at that time Mr. Kelly—he had introduced Mr. Mike Kelly. Mr. Kelly walked out to the car and came back in with what we referred to as a shop card.

And he said, "You are entitled to this. Display it in the window. I know you will be proud of it."

Q. Was that a Union shop card?

A. It was.

And Mr.—

Q. Did Mr. Kelly state what hours they wanted?

A. Yes, he stated they wanted to cut off an hour 932 in the morning and an hour at night, and no Sunday hours.

Q. What were the hours he was seeking?

A. 8:00 A. M. to 6:00 P. M., Monday through Friday, and 8:00 to 9:00 P. M. on Saturday. No Sunday hours.

Q. Now, how long did the strike last in 1919?

A. Approximately eight days.

Q. Now, after the conclusion of the strike, what were the market-operating hours in Chicago?

A. 8:00 A. M. to 6:00 P. M., Monday through Friday. 8:00 A. M. to 9:00 P. M. on Saturday.

Q. Did those marketing hours continue until 1937?

A. Till 1937.

Q. Except for the strike in 1919, has Local 546, or any of the other defendant local Unions, conducted a strike in Chicago?

A. That is the first and only strike we have had.

933 *Cross-Examination by Mr. Christensen.*

Q. Mr. Gorman, in the last ten years—that will take us back to '52—apart from the strike vote that was taken in favor of a strike against Jewel and National Tea in 1957, has this Union ever taken a strike vote?

A. I don't remember any other strike vote at any time.

Q. At any time?

A. At any time.

Q. And the only time you—

A. That I have sat in negotiations. You are referring to the ten years prior to this?



A. Yes, I am not going to try and go way back. You can go back further if you want to.

You have been president since 1951?

A. That's right.

Q. And during your entire tenure the only employers against whom a strike vote was sought, was the one against Jewel and National Tea in 1957; isn't that correct?

A. That's right.

936 THEODORE J. MEINDL, a witness called on behalf of defendant Union, having been first duly sworn, deposeth and saith as follows:

*Direct Examination by Mr. Dunau.*

Q. Would you state your full name, please?

A. Theodore J. Meindl.

Q. Where do you live, sir?

A. 524 Maple Avenue, Wilmette.

Q. Is that here in—

Q. In Wilmette.

Q. Mr. Meindl, in 1957 did you operate a chain of stores in Chicago known as the Del Farm Stores?

A. Yes, I did.

Q. What was your position with Del Farms?

A. President.

Q. How many stores did you operate in 1957?

937 A. I believe—let's see. Twelve. There were eleven in service and—no, eleven self-service and one service.

Q. The eleven self-service, you mean the eleven self-service meat departments, and one service meat department?

A. That's correct.

Q. Did you sell these stores?

A. Yes, I did.

Q. To who?

A. To National Tea.

Q. When?

A. In February and March of 1958.

Q. Now, how long had you operated Del Farm before you sold it?

A. About twelve or thirteen years.

Q. At the time that you sold your Del Farm stores, what was the approximate dollar volume of the meats that you sold in the stores?

A. About six and a half million dollars.

Q. Now, before you began operating the Del Farm stores, what did you do, sir?

938 A. Well, I was with A&P, superintendent at the time of around three hundred stores.

Mr. Christensen: Keep your voice up a little.

By the Witness:

A. Superintendent of A&P at the time. Around three hundred stores. Meat operations.

By Mr. Dunau:

Q. You supervised or were a meat superintendent of three hundred A&P stores?

A. Yes.

Q. Were you in charge of meat operations, did you say?

A. Meat operations.

Q. Were those three hundred A&P stores in the Chicago area?

A. In Metropolitan and suburbs, as far as Streator, Illinois. On one extreme we went down as far as Streator, Illinois, and as far east as Goshen, Indiana.

Mr. Christensen: Could I inquire how far north?

939 The Witness: Wisconsin. The boundary line of Wisconsin.

By Mr. Dunau:

Q. Was most of the meat which was purchased for sale in these three hundred stores purchased through your department, sir?

A. Yes.

Q. Now, when you operated the Del Farm stores, did you contract with the defendant local Unions in this case covering the employment of butchers in these stores?

A. Yes, I did.

Q. Were the market-operating hours of your meat departments in the Del Farm stores determined by the collective bargaining agreement?

A. Yes, they were.

Q. Were you a member of Associated Food Retailers?

A. No, sir.

Q. When did A&P begin operating meat departments in the Chicago area?

A. Well, we had stores in the suburbs of Chicago 940 prior to 1938. Around '37-38, that we entered into Chicago and negotiated—I originally negotiated the contract when we entered into Chicago with Jim Lavery.

Q. Who is Jim Lavery?

A. Head of the local, 546.

Q. You then entered into the agreement on behalf of A&P with Jim Lavery?

A. At that time.

941 By Mr. Dunau:

Q. And did that agreement cover market operating hours of the stores in Chicago?

A. Yes, it did.

Q. Sir, based on your experience, please state whether in your opinion fresh beef, veal, lamb, mutton, and pork can be sold in a self-service meat department between the hours of 6 p. m., and 9 p. m., without employees on duty in the meat department?

A. My own opinion, no.

Q. Would you state why not?

A. Well, in the past several years, since I have sold out my business, I have made observations on night operations, meat operations, and these observations have been made across the country all the way from California to Florida and I have found my operations without employees has been unsatisfactory.

Q. What was—

A. And I will give you that—I will try to give you the reasons. One, because of packaging control in the store, customer packaging control. What do I mean by that?

942 If you ever watched a customer walk into a meat department and pick up a package, she looks at it, she looks at the price, she is looking for bone, fat content, and she decides not to buy the package. She will place that package not where it was before, probably some other part of the counter.

Now, secondly, many customers, and a number of customers come in, when they handle a package in that manner, they would tear the cellophane to that package. In tearing the cellophane to that package, when she is through with it and does not buy it, she places it in the counter. That package then becomes unsalable.

What do we have to do with the package? The package then should be rewrapped, sent back to the processing men, rewrapped and placed back in the counter.

Now, you can see, gentlemen, if you had fifteen or twenty customers in that department handling packages in that manner, what an untidy condition you would have in these departments.

943 This has been one of my main objections to employing and operating self-service departments without employees.

I have another objection. This is my own personal ob-

jection. Many people experienced in the field in this business, experienced in this field as I am, we quite agree on this point.

Mr. Christensen: May I ask the witness to tell what he believes, not what he thinks other people believe.

The Court: Yes, your own opinion.

The Witness: This is my own opinion of it.

Mr. Christensen: And ask that be stricken.

The Court: Yes, the "we" may be stricken. You want your own opinion.

Mr. Dunau: Just stick to what you say you know.

The Court: Not the opinion of others.

The Witness: Well, secondly, there is another angle on this night operations which I objected to as unsound  
944 business. It was the varieties of cuts that the manager, meat market manager, is allowed to put into the department.

By varieties of cuts, I mean this, they will display during these dull business hours, days—that would be usually Monday, Tuesday, and Wednesday—

By Mr. Dunau:

Q. You say these are dull days?

A. These are dull business days. They will probably place one cut, for instance, a rump roast at three pounds in the counter, but they will not have a four-pound cut or a five-pound cut or a six-pound cut or a two-pound cut.

Now, a lady comes up to this counter, and she wants a five-pound rump roast, and all you have got in the counter is a three-pound cut.

Now, who is going to help this lady? Here she is. She wants a five-pound cut, and all we are telling her is that all we are going to give you and sell you is a three-pound cut. If you don't want a three-pound cut, why, you will just have to shop elsewhere.

945 Now I have seen this happen many times in the stores.

I have also seen the slow nights, business nights, where they don't allow legs of lamb, veal roasts, maybe pork roasts—they will have pork chops, but they won't have pork roasts.

A customer comes in and wants a pork roast. If you don't have it displayed, there is reason for not displaying it, because of shrinkage and waste, we usually have it in a cooler.

Now, if a man is on duty, he would be able to supply that customer with a particular roast which you don't have on display.

Now are we giving customer satisfaction? I don't see in my opinion—this is my personal opinion—that you can satisfy your customer without an employee on the job.

946 Q. Now, sir, in your experience have you found that some customers are unfamiliar with the uses of particular meats and required assistance of a butcher in telling him what is desirable for particular meals?

A. Well, yes, I guess we do find cases like that. The younger set, just getting married, know very little about cooking and they would like to have someone guide them a little bit, tell them "This is a nice pot roast, cook it so long."

This is where the man on duty can really help that lady perform her job at home.

Q. Now, in your observations of meat departments, where an employee is not on duty at all, have those nights been confined to Monday, Tuesday and Wednesday?

A. Well, I think in my observations they have been confined to those nights.

Q. On Thursday and Friday, have you found that at least a skeleton crew is always on duty?



A. Yes, I have found the skeleton crew on Thursday, 947 day, and I have found in my observations on Friday, stores operating a skeleton crew, and I find, too, that operations that do good business with a skeleton crew are very unsatisfactory.

Q. Are you saying, sir, that—

A. What I mean to say is when they operate on a business night, like Friday night usually is a busy night, operating with a skeleton crew I found that to be unsatisfactory, and if you would like me to explain why, I will be glad to do it.

948 Q. Would you please explain, sir?

A. I found operations on Friday night with a skeleton crew—and I have had some personal experience with this myself—that the meat that has been processed in the daytime, prepared for Friday night, is usually sold out, and not having a full complement Friday night to prepare and process meats for Saturday morning's opening, this has been the reason for it.

I have seen stores Saturday morning without meat in their counters, fresh meats, up as late as eleven o'clock. There is very little meat in their counters, where they should have been jammed up and fully processed, because the working job hasn't been done the day before.

949 Q. Mr. Meindl, on a meat department operation in a self-service department, do you have a problem of replenishing meat that is being sold during the hours between six and nine?

A. Well, there is a job without anyone on there. They should be replenished.

Q. Has it been your observation that a variety of meat has been sold out and there is nothing to replace that?

A. Yes, I thought I explained that to you before.

Usually you don't have cuts, and no one on the job, and the lady is looking for a certain cut and there isn't a cut there to be had, and there is no one there to service her.

Q. Thank you, sir.

A. The cuts could be in the icebox, in the cooler, refrigerator, but they are not in the case.

950 *Cross-Examination by Mr. Christensen.*

Q. Mr. Meindl, by whom, if anyone, are you employed now?

A. By whom?

Q. Yes.

A. I am employed by, right now, in a supervisory capacity at National Tea.

Q. National Tea?

A. That's right.

Q. Is that steady employment?

A. Well, no, there is some temporarily. I have been on a consultant basis for other companies on a temporary basis.

Q. Do you draw annual compensation from National Tea now?

A. Annual compensation? I have drawn about 951 three weeks' compensation.

Q. Do you have any contract with them by which they agree to employ you as a consultant?

A. No.

952 Q. And when did you draw this three weeks' compensation from National Tea?

A. In the last few weeks.

Q. In the last few weeks?

A. That's right.

Q. And you say you have been employed as a consultant by others?

A: That's right.

Q: What others, please?

A: Is that necessary?

Q: Please?

A: Well, Benner Tea Company.

Q: Benner?

A: Yes, sir.

Q: Where do they operate?

A: Burlington, Iowa.

Q: How long did you work for them?

A: Four months without a contract.

Q: And were you giving them advice as to operating a meat department?

A: Yes, sir, and groceries, and produce.

953 Q: Groceries and produce?

A: Yes, sir.

Q: How many meat stores do they operate?

A: I think there is thirty-three.

Q: How many?

A: Thirty-three.

Q: Who else have you worked for as a consultant?

A: Well, I was sent over by a group to Germany to consult on buying a chain along the Rhine River called the Ottman Stores.

Mr. Dunau: Spell that for the reporter, please.

The Witness: O-t-t-m-a-n.

By Mr. Christensen:

Q: In this country who else have you been employed by as a consultant?

A: Since I left my job at National Tea, 1958? I went over to set up buying departments in California for six months.

Q: Buying departments for National Tea?

A: Buying departments on produce.

Q. On produce?

954 A. Yes.

Q. So that as I understand it, you operated the Del Farm food stores from—well, when did you start operating Del Farm foods?

A. 1945.

Q. 1945, about?

A. Yes.

Q. And you operated that until February or March of 1958?

A. Just about. Right.

Q. You did not own that organization, did you? That was a corporation—

A. That's right.

Q. (Continuing.) —that had several other stockholders?

A. That's right.

Q. And that was—either stock or the stores were sold to National Tea shortly after the turn of the year, 1958?

A. That's right.

Q. From that time on you have only operated as a consultant in meat operations, as you have told us?

955 A. That's right.

Q. So that you went out and arranged a buying operation for National Tea on produce somewhere out on the Pacific Coast in 1958, or thereabouts?

A. Well, later on in the year.

Q. Then you worked for this outfit out here in Iowa for three or four months?

A. Yes.

Q. And you say you have done two or three weeks' work recently for National Tea?

A. That's right.

Q. Was that in connection with meat operations or other operations?

A. General operations.

Q. General operations?

Specifically, what was the nature of it?

A. General food operations.

Q. Not meat operations?

A. Meat was included.

Q. Well, what did you advise them with respect to meat within the last few weeks?

957 A. The National Tea bought over a chain of stores in Pittsburgh and Youngstown.

By Mr. Christensen:

Q. You will have to speak louder.

A. They bought a chain of stores called the Loblaw in Pittsburgh and Youngstown. I was sent down there to make my observations in all departments, meats, groceries and produce departments, and give them my opinion  
958 of what should be done, what could be done, to help those stores.

Q. How many stores were there involved?

A. One hundred fifteen stores.

Q. What?

A. One hundred fifteen stores.

Q. One hundred fifteen stores?

A. Yes.

Q. You worked at that for two or three weeks?

A. About three weeks; yes, sir.

Q. And the nature of that work in part was to examine the operating statements of each of those one hundred fifteen stores to see what appeared to be profitable and which not, isn't that true?

A. No, not exactly. It was to observe the stores, and what conditions the stores were in, and what had to be done to improve the store conditions.

959 Q. Did you look at the operating statements of each one of those 115 stores?

A. I looked at most of them, but I didn't look at all of them.

Q. Did you know which were the most profitable and which were the losers?

A. Yes.

Q. Did you concentrate your attention upon those that appear to be the weakest stores?

A. Not necessarily.

Q. How many stores—

A. I didn't have time to do that, counselor.

Q. All right.

A. It was general information which they wanted from me.

Q. How many stores did you actually go into?

A. Well, I went into about 55 stores of the Loblaw group and about 65 of the competitors'.

Q. How old a man are you, Mr. Meindl?

A. 62.

Q. How many hours a day did you work in this two or three week exploration?

960 A. How many hours?

Q. A day, yes.

A. Well, I usually start about 9 o'clock in the morning. The stores are open at night, and I worked up until 9 o'clock that night. And you could count that almost every day.

Q. Did you come home to Chicago weekends?

A. No, sir.

Q. You stayed there, right straight through?

A. One week I came home.

Q. What?

A. One night I came home to Chicago.

Q. One night?

A. Yes, sir.

Q. Between 9 a.m., and 9 p.m., I assume you took off time for lunch and time for dinner?



A. Yes, sir.

Q. So that you probably worked eight, nine hours a day?

A. No, I would say it's more than that.

Q. More than that?

A. Yes. I had to get my information quickly.

961 Q. When you came home to Chicago during this thing, when did you come home, on a weekend?

A. Usually.

Q. Usually?

A. Yes. Saturday night I came home and—the stores are closed Sunday down there.

Q. You would come home, get an airplane late Saturday?

A. That's right.

Q. What line did you fly?

A. Well, it would be United Airlines.

Q. United Airline?

A. It could be Eastern.

Q. What did you say?

A. I think it was Eastern one time.

Q. Eastern one time?

A. Yes.

Q. One time you came home on United and one time you came home on Eastern?

A. I think so. I believe—some of these were arranged by the company, and they made all the arrangements where I didn't make these arrangements.

962 Q. How many of these trips did you make back and forth between Chicago and Pittsburgh? You made two—

A. In the past three weeks I made one trip home.

Q. What?

A. In the past three weeks I made one trip home, other than today.

Q. Other than today?

A. Than yesterday. I left yesterday at 12 o'clock.

Q. Wait a minute. Do I misunderstand you? I thought this task had been completed and that you were at it all told about three weeks, and it occurred some little time ago. Is this task still going on?

A. Yes, sir.

Q. So you have not yet been in the entire 120 stores, is that right?

A. No, sir.

963 By Mr. Christensen:

Q. That is not right?

A. I say I have not been in 120 stores. 115 stores.

Q. 115 stores?

Well, I understood you somewhere to say you had investigated 55 of the purchase stores and approximately 65 competitive stores; and you have done that in the past three weeks?

A. Just about.

Q. Pardon?

A. Just about that in the past three weeks, yes, sir.

Q. Do you have an office that you work in in Pittsburgh?

A. No. There is one in Youngstown. There is one in Pittsburgh. There is two Divisions.

Q. When you go to Pittsburgh to do this, where do you sit down to assemble your information and do your notes and complete your work?

A. I do that at night at the motel I stay at.

Q. At the motel you stay at?

A. I do that work.

Q. You do that after 9 o'clock?

964 A. Yes, sir.

Q. Now, when you did this work in Iowa for this Tea Company whose name slips me—

A. Benner Tea Company.

Q. When did that occur?

A. In '59.

Q. What time of the year?

A. February—February.

Q. Did you move out there or did you commute?

A. I stayed out there probably two weeks, the first two or three weeks. I believe I stayed there for three weeks without moving. Then I commuted.

Q. Did you visit stores or did you work in an office there and get reports and consider the setup?

A. Well, my job is to visit stores and make—form opinions on store conditions. That is usually my job.

Q. I don't care what your usual job is.

A. That's what I do.

Q. This particular time is all I am inquiring about, Mr. Meindl?

A. I visited all of the stores of the Benner Tea 965 Company as well as my competition during that period.

Q. Now, did they have self-service meat departments?

A. Yes, sir.

Q. Did they have night operations?

A. Yes, sir.

Q. Did—

A. Not every night.

Q. What?

A. Not every night.

Q. How many nights did they operate?

A. Well, I think it was Thursday and Friday they operated.

Q. Thursday and—

A. —Friday, as I remember it.

Q. This was 1959?

A. Yes, sir.

Q. You are the expert consulting with these people?

A. That's right.

Q. Did all of their stores operate Thursday and Friday night in the meat departments?

A. There may have been a few that didn't. There may have been a few. I think there was about three or 966 four that did not operate.

Q. Did not operate at night at all?

A. I am quite sure there was about three or four that did not operate at night.

Q. And then the others operated you think Thursday and Friday night?

A. That's right.

Q. Are they still operating Thursday and Friday night?

A. I don't know. I haven't been out there since.

Q. Did you recommend to them that they not operate Thursday and Friday night?

A. What are you referring to, the store or to a particular department?

Q. I am referring to the operation of this Benner Tea Company's meat departments on Thursday and Friday nights. Did you advise that company not to operate those meat departments on Thursday and Friday night?

A. No, I did not advise them.

Q. So now in this purchase of the Loblaw operation in Pittsburgh that you have worked on for two or three weeks, do any of those stores have meat departments?

A. Yes, sir.

967 Q. How many of them?

A. They all have them.

Q. They all have meat departments?

A. Yes.

Q. Are any of those service markets?

A. I think there is one in the group, one that is—

Q. And the others are—

A. (Continuing)—self-service.

Q. Self-service.

Do they operate any nights?

A. Yes, sir.

Q. How many nights?

A. Every night.

Q. Until what hour?

A. Nine o'clock. Nine o'clock.

Q. Nine o'clock.

And do the competitive chains in the Pittsburgh area offer night sale of meats, self-service?

A. Yes, sir.

Q. Have you observed the night sale of meats out on the Pacific Coast in connection with this survey you 968 made out there for National Tea in the produce business?

A. Yes, sir, I did, out in California.

Q. All right. And—

A. And Arizona, Phoenix.

Q. The night sale of meats—

A. Yes.

Q. (Continuing)—throughout the country is quite prevalent, is it not?

A. In certain areas it is.

Q. Well, they sell them in New York, don't they? They operate at night in New York, don't they?

A. Yes.

Q. Boston?

A. I haven't been to Boston.

Q. You don't know about Boston?

A. No.

Q. Detroit?

A. Detroit, yes.

Q. Minneapolis?

A. I am not familiar with Minneapolis.

Q. St. Louis?

969 A. Not familiar with St. Louis.

Q. Omaha?

A. No, I don't know.

Q. You don't know.

Memphis?

A. No, I don't know.

Q. You don't know about Memphis?

A. No.

Q. Atlanta, Georgia?

A. No, I don't know.

Q. Baltimore, Maryland?

A. Yes.

Q. Philadelphia?

A. Yes.

Q. All Upstate New York?

A. Yes.

Q. Have you advised National Tea to cut out its night operation of meat in the Pittsburgh area?

A. I didn't advise them one way or the other.

Q. Then you have not advised them to close down their night operations?

970 A. My advice was not along those lines.

Q. You haven't given them that advice, have you?

A. Not yet. I don't think it is the time to give them that advice.

Q. Now, you recognize, Mr. Meindl, that various operators hold different opinions as to proper ways to operate a market, isn't that correct?

A. That's correct.

Q. And I assume you do not maintain that you are the only skilled marketer of meats in the country?

A. No.

Q. Do you know whether or not Jewel Food Stores enjoys a greater ratio of meat sales in comparison with its total volume than National Tea enjoys in respect to its total volume?

A. Yes, I know that.



Q. And Jewel enjoys a greater ratio of meat sales, does it not?

A. I think so. I don't know. From what you say or someone else in your company would say, they claim they have got a certain percentage, and that's all I know.  
971 I do not know the exact figures of Jewel Tea's meats, whether they are greater, or not. I have heard it said that they enjoy a greater percentage of—

Q. That's been said in the trade journal, hasn't it?

A. That's right. But I can never verify it.

Q. And does that to you indicate that Jewel knows pretty well how to run a meat department?

A. I don't think anyone has to question that.

Q. Now, when you were operating the Del Farm Stores, you, of course, could not sell meat at night or the Del Farm Foods could not?

A. No. No, we could not.

Q. So that you have no experience with the night sale of meats in the Del—Del Farm operations?  
Del Farm Food experience?

A. No.

972 Q. And prior to that time you had no experience in the night sale of meats, had you?

A. Not in self-service operation.

Q. Yes.

A. But, in service operations I had had.

Q. But you had had none in self-service?

A. No.

Q. And you have never yourself had responsibility of any organization which was permitted to sell meats at night self-service, have you?

A. No—yes, I have. Benner Tea Company.

Q. Benner Tea Company? I thought you were purely a consultant, though.

A. Consultant and an operator at the same time, while

I was there. I took over the operations. I was consultant at first; then I took over the entire operations for about two months. It was a four month deal.

Q. I haven't—I misunderstood your testimony.

A. And I have—I do have some experience with the night operations with Benner Tea Company.

973 Q. Is that an independent or self-contained operation, Benner Tea Company?

A. Independent chain.

Q. It is an independent chain?

A. Yes.

Q. And had there been an upset in management? How come they—why did they hire you to consult with them; that is what I am trying to get at.

A. Well, a firm is going to go broke; they would do anything. So they hired me to see if they could get it in condition.

Q. They were not operating successfully?

A. No. And we made it successful in four months. We turned it into black figures in four months.

Q. Well, I don't—

A. That's right.

Q. And you continued the night sale of meats?

A. Yes, sir.

Q. Now, in expressing your opinion to counsel, you said that you objected to the night operations of meats.

I gathered that you objected to it while you were  
974 operating Del Farm here in Chicago; is that correct?

A. No, I did not. I said I did not object to night operations of meats. I objected to night operations without an employee.

Q. All right.

A. My objection is not—without an employee and—

Q. All right. Did you ever voice this objection to operating at night without employees on duty?

A. Yes, I have.

Q. Did you tell that to Mr. Kelly?

A. I think I have, yes.

Q. When?

A. Well, I think I must have told it to him several times. If not Mr. Kelly, other people, people experienced in the business, I have told them that.

Q. Wait just a minute. We will get to them all, but I wanted to rivet your attention now to Mr. Kelly.

Do you recall participating at all in the negotiations that led to the Amalgamated contracts in the fall of 1957?

A. Yes, I participated in those contracts.

Q. All right. Now, there were negotiations there 975 that ran roughly from September on pretty well through November, do you recall that, of 1957?

A. Yes. I generally recall it.

Q. During those negotiations, either privately to Mr. Kelly alone or in a meeting where you were all assembled, did you voice this objection to night operations without butchers on duty to Mr. Kelly?

A. No, I don't think so. I don't think it was even discussed at the time. As I remember it, we were discussing night operations. Without employees—that didn't enter into any discussions, I don't believe, until the issue, I think a year or two later, the issue came about of what my opinion of it was, and I have seen some of these night operations since.

Q. Well, Mr. Witness, please confine yourself to the 1957 negotiations.

A. No, I am quite sure I did not discuss that with Mr. Kelly, because that wasn't the issue at the time.

Q. Was there anyone in 1957 authorized to speak for Del Farm Food Stores in those negotiations other than Ted Meindl?

976 A. No, sir.

Q. So that if there were any negotiating sessions

at which you were absent, your organization had no one there to speak for it, is that correct?

A. That is correct.

977 By Mr. Christensen:

Q. Did you tell Kelly in, let's say '55 or '56, that you thought there should be no night operation unless butchers were on duty?

A. No, sir. No.

Q. Did you ever say that in substance to Kelly?

A. No, I don't think so. At that time I don't think there was any discussion along those lines at all.

978 Q. After 1957, have you ever said that in substance, that there should be no night operations without butchers on duty?

A. No, I don't believe I have.

Q. Have you ever told that to any of your competitors or your fellow people in the industry?

A. I think we have discussed the possibility, the soundness of opening it operating without employees. In substance we have discussed it pro and con.

Q. Within the industry?

A. Within the industry, I think it has been. It is in later years when this issue—when it became an issue.

979 Mr. Christensen. I am not asking him about negotiations.

Mr. Christensen: It is not. It is the antithesis.

Mr. Dunau: It is the fulfillment of negotiations.

Mr. Christensen: Well, all right.

Mr. Dunau: I will stand on my objection.

The Court: He may answer.

By the Witness:

A. Well, that is a question. You know I did not attend all those meetings, and I do not believe I knew of it at the time.

980 By Mr. Christensen:

Q. Have you discussed this subject with counsel?

A. This subject?

Q. That you have been testifying about here today?

A. Yes.

Q. And how often?

A. Once.

Q. When?

A. Once, and then right before we came in here.

Q. Well, I assume a little while today?

A. Yes.

Q. Now when was this once time?

A. I believe it was three weeks ago.

Q. Three weeks ago. Where did that discussion take place?

A. Down at Mr. Kelly's office.

Q. Mr. Kelly's office?

A. Yes.

Q. Where is your office?

A. My office is at 524 Maple Avenue.

Q. In Wilmette, in your home?

981 A. Yes.

Q. So you went into Emmet Kelly's office about three weeks ago and sat down with Emmett and his lawyers and discussed this, is that correct?

A. That's correct. They asked me my opinion on it.

Q. How long were you there, Mr. Meindl?

A. Well, I don't think I spent over an hour or an hour and a half. An hour and a half at the most.

Q. An hour and a half.

Now, is it true, as a merchandising proposition, that by

patronage by your customer acceptance of a marketing program you can pretty well determine whether it pleases or displeases the customers?

A. I think we can.

Q. They are the ones who really vote to whether service with or without butchers is satisfactory by their trade, don't they?

A. Repeat that again, counsel.

Mr. Christensen: Read that.

(Question read.)

By the Witness:

982 A. Well, there are several ways of answering that.

By Mr. Christensen:

Q. Well, answer it the truthful way.

A. That's the only way I am giving it to you.

Q. Go ahead.

A. We, in the food business, including Jewel, National, or anyone else, we open up a store. We quite often steer a customer a certain direction in a store.

You see, subconsciously many times there are things that, because of our actions in the store, of our movement, we place a produce department in a certain area, and we hope she will go in that area.

She goes to the meat department for certain reasons. She goes to the frozen food department for certain reasons. We direct that customer in every one of these areas, without a vote on the deal.

Now, I think that ought to answer it. The customer does not always have a vote on what to say, what happens in these stores.

983 Q. Mr. Meindl, let's get back now to what I asked you.

The customer is the one who finally determines whether night operation of a self-service meat market on the slow



nights of the week in any event is satisfactory by his or her patronage or lack of patronage?

A. Well, I would say so.

Q. That is true, isn't it?

A. Yes, that's right.

Q. And if you have a store where the ratio of night sales of meat to groceries remains constant before and after 6:00 P. M., although no butchers are on duty after 6:00 P. M., can you conclude that the night sale of meats without butchers on duty is satisfactory, at least to the customers of that store?

A. No, I could never come to that conclusion.

Q. You could not?

A. No. I have made these observations as I have mentioned here before, because of the condition of the 984 counters—

Q. Did you ever make any such observation in any Jewel-managed store?

A. No.

986 By Mr. Christensen:

Q. Have you ever been in a Jewel Store where meats are vended at night, self-service, without a butcher on duty?

A. No, sir.

Q. What?

A. No, sir.

Q. And, as a matter of actual knowledge you have made no observation and have no knowledge as to the conditions of the counters in a Jewel meat store operated without butchers on duty, do you?

A. Yes, I made some observations in the daytime and I found some stores.

Q. Mr. Witness, will you please answer my question instead of arguing?

A. No, I did not argue that point. You just asked me that.

Q. You have no knowledge as to Jewel Stores on night operations without butchers?

A. No, sir. I do not.

Q. You have never been in one, have you?

A. No, sir.

987 Q. All right. How long have you known about this lawsuit, Mr. Meindl?

A. Honestly, I don't know. It could be two years, a year.

Q. Some little time?

A. Yes. A couple of years, three years. I don't know.

Q. Have you ever discussed this lawsuit with anyone beside Mr. Kelly and his lawyers?

A. No, I have never. I think that—no, I have never discussed the lawsuit. I was told, I believe by Mr. Kelly, that there was a lawsuit, but he never discussed it with me at all.

Q. When did he tell you that?

A. This, I don't know. I know that's—

Q. Some two, three, four years ago?

A. Could be, yes.

Q. Well, you weren't running any meat department at that time, were you?

A. No.

Q. Do you see Mr. Kelly fairly frequently?

A. Well, I consider him a good friend of mine, but  
988 I don't see him frequently.

989 Mr. Dunau: Would you mark these Defendant Union Exhibits 25 through 30 for identification, and would you mark that 31, 32, and 33?

(Said documents were marked Defendant Union Exhibits 25 through 30, and also 31, 32, and 33 for identification.)

If your Honor please, Mr. Christensen and I have agreed to the receipt in evidence of certain documentary matters.

Of course, Mr. Christensen does not agree as to the weight or materiality of these exhibits.

As Defendant Union Exhibit 25, a collective bargaining agreement between Food Industry, Inc.—

Mr. Christensen: Will you go slow enough so Fred could jot them down?

Mr. Dunau: Yes.

Mr. Daugherty: That is number what?

Mr. Dunau: Defendant Union Exhibit 25, an agreement between Food Industry Committee and Amalgamated Local No. 81, pertaining to meat markets.

As Defendant Union Exhibit 26, an agreement between Wholesale and Retail Fish Dealers of Seattle, Washington, and Retail Fish Workers of Local 81, of the Amalgamated Meat Cutters and Butcher Workmen of North America.

As Union's Exhibit 27, an agreement between Food Industry, Inc., and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 151.

As Defendant Union's Exhibit 28, an agreement between Amalgamated Meat Cutters Union No. 333, and Silver Bough Employers' Association.

As Defendant Union's Exhibit 29, an agreement between Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 384, and Meat Dealers of Anaconda, Montana.

As Defendant Union's Exhibit 30, an agreement between Amalgamated Meat Cutters and Butcher Workmen Local Union No. 114, and Retail Meat Markets in St. Paul, Minnesota, and vicinity.

As Defendant Union's Exhibit No. 31, a study entitled, "Consumer Expenditure for Meat By Cities."

As Defendant Union's Exhibit 32, a study by the U. S.

Department of Agriculture, Household Food Consumption Survey, 1955, Report No. 1, which I have excerpts, Page 1, 3 and 66, from that report.

As Defendant Union's Exhibit 33, a study by the 991 U. S. Department of Agriculture, entitled, "Household Food Consumption Survey, 1955, Report No. 6."

We have excerpts from Page 1—or we have taken Pages 1 and 2 from that report of this exhibit.

Mr. Christensen: Our position as to these is that we agree these are authentic reproductions of contracts. The Exhibits 29 to 30 are contracts of the Meat Cutters Union at the localities counsel mentioned. We don't think they are material. It is the same general situation as existed with respect to the Cleveland contract and I think your ruling would be the same, and I therefore suggest they go in subject to our objection.

As to these other documents, again, we think they tend to prove nothing but I am not going to object to them if counsel wants to put them in.

The Court: Well, they will be received subject to the objection.

(Whereupon DEFENDANT UNION'S EXHIBITS 25 through 33, inclusive, were received into evidence.)

994

Wednesday, November 7, 1962,  
10:00 o'clock, A. M.

Court convened pursuant to adjournment.

996 WALTER RUDOLPH SANTELER, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dunau.*

Q. Would you state your full name, please, sir.

A. Walter Rudolph Santeler.

Q. And try to keep your voice up, please, Mr. Santeler.

Where do you live, sir?

A. I live in Rockford, Illinois.

Q. What is the address there?

A. 3510 Rural Street.

Q. Are you a member of Local 189?

A. Yes, I am.

Q. Have you been a member of that local since about January 1, 1959?

997 A. Yes, I have.

Q. Before then, were you a member of Local 546?

A. Yes, I was.

Q. And have you been a member of Local 546 since about December of 1943?

A. Yes, I was.

Q. For whom do you now work?

A. The A&P Tea Company.

Q. What store do you work in?

A. The A&P on Alpine and Newberg Roads in Rockford, Illinois.

Q. What is your job at the store?

A. I am a head meat cutter.

Q. How many employees do you supervise?

A. Three.

Q. Is there sometimes a part time additional employee who comes in?

A. Yes, yes.

Q. So that it would be three, or four would be additional?

A. Sometimes four, yes.

Q. When did you first begin working in a meat department, sir?

A. I started as a delivery boy in about 1942.

Q. And for whom did you work as the delivery boy?

A. His name was I. L. Langson, and he was at 6538 Sheridan Road.

Q. And did Mr. Langson operate a service meat department at that time?

A. Yes, he did.

Q. When did you first begin working as an apprentice meat cutter?

A. It must have been in September or October of 1943.

Q. For Mr. Langson?

A. Yes.

Q. And did you work as an apprentice meat cutter for Mr. Langson until you went into military service?

A. That's right.

999 Q. And when did you go into military service?

A. December 20th of 1944.

Q. And when did you return from service?

A. It was the beginning of August, 1946.



Q. And did you return to work for Mr. Langson as an apprentice meat cutter?

A. Yes, I did.

Q. And how long did you stay with him?

A. I stayed with him until the first of the following year. That was—that would be 1947.

Q. Now was that in January about of 1947?

A. Yes, it was.

Q. Now in January of 1947 did you go to work for the Jewel Tea Company?

A. Yes, I did.

Q. And in what capacity?

A. As an apprentice meat cutter.

Q. Now did you then become a journeyman meat cutter working for Jewel Tea?

A. Yes. Approximately two or three months after I was with them, I became a journeyman.

Q. Would that be about March of 1947?

A. That's right.

1000 Q. In 1952, did you become a head meat cutter for Jewel Tea Company?

A. Yes, I did.

Q. Now did you continuously work for the Jewel Tea Company between March of '47 and 1952 as a journeyman?

A. Except for the time that I was an apprentice for the two or three months.

Q. Yes. And how many stores did you work in for Jewel during that period of time before you became a head meat cutter?

A. There were about five that I worked in.

Q. When you were made a head meat cutter, in what store did you work?

A. The first one was at 22 Circle Drive, in Elmwood Park, Illinois.

Q. Was this a service market?

A. Yes, it was.

Q. And how long did you stay in that store, about?

1001 A. I couldn't give you an exact answer but I would guess that it was about a year and a half.

Q. And what was your next job with Jewel Tea?

A. From there, I was promoted to a self-service type market.

Q. As a head meat cutter?

A. Yes.

Q. What was the location of that store?

A. That store was at 3804 Fullerton Avenue.

Q. And can you tell me for what period of time you continued to work as a head meat cutter for Jewel in the Chicago area?

A. What period of time?

Q. Yes. How many years?

A. I worked from 1952 until I left Chicago for Rockford in—let's see, from 1952 and I went to Rockford in '58.

Q. Did you move to Rockford about November 10, 1958?

A. Exactly.

Q. Now while you were working as a head meat cutter for Jewel in the Chicago area, about how many stores did you work in?

A. As a head meat cutter. It was four or five.

1002 Q. Were all the self-service markets except for the first store in which you worked?

A. That's correct.

Q. What was the cause of your move to Rockford, Illinois?

A. My immediate supervisor came to me and asked me if I would go to Rockford to open the meat markets in the stores in the Rockford area.

Q. And you agreed to go to Rockford to open the meat markets for Jewel in that area in Rockford?

A. Yes.

Q. What was the first Jewel store you worked in, in Rockford?

A. It was at 3510 East State Street.

Q. When did that store open for operation, sir?

A. It was about the 19th, about nine days after I moved there in '58.

1003 Q. Would that make it November 19, 1958?

A. Yes.

Q. And how many butchers were under your supervision at that store when you opened the meat department for operation?

A. When we opened, we opened with approximately twelve.

Q. Twelve?

A. Approximately twelve.

Q. And did that complement of butchers drop thereafter?

A. Yes, it did.

Q. And what did it become?

A. I believe we finally went down to five or six men.

Q. Was this a self-service meat market?

A. Yes, it was.

Q. Did it operate at night?

A. Yes, it did.

Q. How many nights?

A. Five nights.

Q. What were they?

A. Monday through Friday.

1004 Q. And what were the hours?

A. From nine to nine on those days.

Q. That is from 9:00 A.M. to 9:00 P.M.?

A. Yes, sir.

Q. Now, on Monday, Tuesday, and Wednesday, how many butchers were on duty at the Rockford store?

A. It was—

1005 Q. At night?

A. At night. There were one or more depending on the amount of work that had to be done. In other words, the preparation. If you were prepared for business, we would have one there, if you weren't prepared for business, you kept them, whatever men you needed to be in this business.

Q. And when you say prepared for business, what do you mean, sir?

A. Well, a full supply, a variety of the different cuts of meat.

Q. On Thursday night, how many butchers did you have on duty in that store?

A. Generally, with the business in that store, we would go to two men on Thursday, and that—even in that case, it would be two or more again, because a lot of times with a real busy day during the day, I would have to hold more men to prepare meat for the customers that would come in shopping that night.

Q. You would have to prepare for shopping that night, would you also be preparing for shopping the next morning?

1006 A. Generally not, although sometimes we did.

Q. What was the highest number you would have coming in on Thursday night?

A. Of meat cutters?

Q. Meat cutters, yes, sir.

A. I could only guess. I would say that probably Thursday, except for the grand opening time, probably on a Thursday it wouldn't be more than four.

Q. There were times when you had as many as four working on Thursday night, is that correct?

A. Like I say, I can't pinpoint a particular time that it had, but I am sure that it must have been.

Q. All right. On Friday, how many butchers did you have on duty in that store at night?

A. Again, generally, in fact without a doubt, a Friday meant two men for sure if you were prepared, and if you weren't prepared you had to have more men to cut and process the meat to get it out into the counter.

Q. Did you open the meat department of a second store for Jewel in Rockford?

1007 A. Yes, I did.

Q. What was the second store, the location of it?

A. It was at 3214 Auburn Street.

Q. And, what was the date that this second store was opened?

A. I don't know the exact date, but I know it was shortly—about six months, maybe in April of the following year.

Q. Would it be in April, 1959, sir?

A. Yes, about there.

Q. Was that a self-service meat department?

A. Yes, it was.

Q. And did you open that meat department in your capacity as a head meat cutter for Jewel?

A. That's right.

Q. What were the hours of operation in that store?

A. 9:00 to 9:00, Monday through Friday, 9:00 to 6:00 on Saturday.

Q. Were butchers on duty at night in that store?

A. Yes, sir, they were.

Q. How many butchers did you have on Monday, Tuesday, and Wednesday?

1008 A. Relatively the same situation we had on State Street, one—one or more depending again on the needs on Monday through Wednesday, and then on Thursday and Friday—Friday for sure, it was a requisite to have two men there. One man couldn't handle it, and



generally it was two men on Thursday or more. If we were prepared, two would be sufficient. If you were short of items, for instance, on a big sale of pot roasts or steaks which require quite a bit of cutting and trimming, you would have to put more men on to process this and put it into the counter.

1009 Q. Did you open the meat department of a third store for Jewel in Rockford?

A. Yes, I did.

Q. What was the location of that store?

A. That was at 9th and 23rd. The address is 1255 23rd Avenue, I believe.

Q. Did you open that store about February of 1960?

A. Yes. About then.

Q. Was this a self-service meat market?

A. Yes, it was.

Q. What were the hours of operation in that store?

A. Relatively the same, although that particular store didn't hit off in business like the others, so generally one man per night at the beginning of the week was sufficient. This was after opening, of course. During opening, it took more, but when we leveled down, one at the beginning of the week was enough and generally two on Friday night, and sometimes you could get by with one on Thursday, but not very often.

Q. When you say the beginning of the week, are you referring to Monday, Tuesday, and Wednesday?

1010 A. Yes, I am.

Q. Was this store at 1255 23rd Avenue the last in Rockford, the last store that you worked in for Jewel Tea?

A. Yes, it was.

Q. When did you resign your employment from Jewel Tea?

A. It was about May, I believe, in '61.

Q. For whom did you then go to work?



A. For the A&P Tea Company.

Q. What was the first store you worked for, for A&P, or worked in—I am sorry. What was the first store for A&P in which you worked?

A. It was one at—I don't know the number of the street, but it was on Kishwaukee Avenue in Rockford.

Q. Is that K-i-s-h-w-a-u-k-e-e?

A. That's correct.

Q. And for what period of time did you stay in that store?

1011 A. One week.

Q. What was the purpose of that one week in that store?

A. It was an indoctrination period for preparing meats, to learn A&P's methods preparatory to opening of a brand new A&P in Rockford.

Q. Now, in the store that you stayed in for one week, did that store operate at night?

A. Yes, it did.

Q. What were the nights?

A. Monday through Friday, 9:00 in the morning until 9:00 at night, and Saturday from 9:00 to 6:00.

Q. Was a butcher on duty each of the nights?

A. Yes.

Q. Now, you stated that you worked in this store for a week preparatory to the opening of a new A&P store in Rockford, is that correct?

A. That's right.

Q. What was the location of this new A&P store?

A. This was at Alpine and Newberg Road in Rockford.

1012 Q. In what capacity did you go to work for A&P in that store?

A. As journeyman.

Q. For how long did you work in that store as a journeyman?

A. Approximately six months.

Q. What were the store hours in that store?

A. Monday through Friday, 9:00 to 9:00, and Saturday, 9:00 to 6:00.

Q. Was that also the store hours in which the meat department was in operation?

A. Correct. Correct.

Q. How many meat cutters were on duty in the meat department, Monday, Tuesday and Wednesday?

A. The nights—

Q. Yes, at nights.

A. (Continuing.) —that they were?

1013 Well, after—again, after the leveling off—of course, at grand opening, you ran into nights where just about every meat cutter there worked at night, but after we leveled off we had generally one or occasionally he would have to leave an extra man to—the head meat cutter would have to have an extra man to again bolster any cutting or something would have to be done there.

Q. How many meat cutters would you have on duty on Thursday in that store?

A. He always had two when I—when we opened. This was after the leveling off period.

Q. After the leveling off?

A. And sometimes he even kept more of us there.

Q. There were two or more, is that correct?

A. That's correct.

Q. And on Friday, what was the situation with respect to the employment of meat cutters at night?

A. The same as Thursday, always two and sometimes more.

Q. Now, you worked in this store for about six months. Is that correct?

A. That's right.

1014 Q. And what happened at the end of that period of time?

A. At that time I was promoted to head meat cutter with A&P and they sent me out to the Freeport, Illinois, store.

Q. And are you still working in that store now?

A. No, I am not.

Q. When did you leave that store?

A. About July of this year.

Q. All right. Now, let's stay with the Freeport store.

What were the hours of operation in the Freeport store, the meat department hours of operation?

A. The meat department hours were from 9:00 to 9:00 on Monday through Friday and from 9:00 to 6:00 on Saturday.

Q. On Monday, Tuesday, and Wednesday, how many meat cutters did you have on duty at night?

A. At night. I had one each night.

Q. And on Thursday, how many employees did you have on duty?

A. It was almost always three or four.

1015 Q. Now on Friday, what was the situation with respect to the employment of meat cutters at night?

A. Almost always five.

Q. Now, what store are you presently working in?

A. I am back at Alpine and Newberg at Rockford, Illinois.

Q. In what capacity?

A. As head meat cutter.

Q. And is that the place that you are now working?

A. Yes, it is.

Q. And what are the hours of operation of the meat department in that store?

A. From 9:00 to 9:00, Monday through Friday, and 9:00 to 6:00 on Saturday.

Q. And how many meat cutters work Monday, Tuesday, and Wednesday in that store?

A. At night, you mean?

Q. At night, sir.

A. I have one there each night.

Q. And on Thursday, how many meat cutters do you employ in that store at night?

A. One, sometimes two.

1016 Q. And on Friday, how many meat cutters do you employ in that store at night?

A. Two, sometimes four.

I might add that, for instance, this particular week I had two men there working Monday night. I mean as an example of one or more.

Q. All right, sir. Now, during the time, sir, that you worked for Jewel as a head meat cutter, did you attend what are called district meetings?

A. Yes, I did.

Q. How often were these meetings called?

A. Generally, they were once a month.

Q. And who conducted these meetings?

A. The District supervisors of the departments involved. In my case, it would be meats.

Q. And how many stores were under the direction of a District supervisor, usually?

A. About the time that I left the Jewel, my particular District consisted of about 16 stores.

Q. And can you give us the name of the District supervisor in the group of stores in which you were a part when you were with Jewel at Rockford at the time  
1017 that you left?

A. His name was Mr. George Seidel.

Q. What was the purpose of a District meeting, sir?

A. It was a method of conveying company policies and cutting procedures and anything else that the company

wanted us to know, to a group rather than for a supervisor to go around to individual persons and convey the same message sixteen times.

1018 Q. Please tell me what was communicated to you concerning the presence of a head meat cutter at the counter while the meat department was in operation?

A. One of the—of course, at that time, Mr. George Seidel had certain things that he said. He called one a directive, and I don't know—it was a case of either this is company policy and this is a must, and he said that one of the things that is a must is a man on the counter at all times and they almost insisted that the man on the counter should be the head meat cutter. In other words, he made it quite emphatic that there should be a man on the counter and also that that man should be—

Q. When did he tell this to you?

1019 A. At these District meetings. This was not just once. This was—generally, at these District meetings, policy was gone over and over again just to keep the fellows in mind of the fact that they sometimes forget.

Q. Please state what was told to you concerning the reasons for having a meat cutter on duty at the counter at all times?

A. Jewel wanted to—and I think they succeeded—they wanted to create a friendly atmosphere between the fellow that was selling the meat and the customer that was buying it. They wanted him to perform any services which this particular customer might want to be done with what she was buying. There were cases where even special orders were requested of this man at the counter.

Mr. Christensen: Well, now, I move to strike that. He obviously has gotten off in a conversation. The detailed part of his answer, I move to strike it.

1020 The Court: Strike it.

By Mr. Dunau:

Q. Please tell us at this point only what Mr. Seidel told you concerning the reasons for having a man at the counter?

By the Witness:

A. This was something that Mr. Seidel never said.

Q. How was company policy communicated to you?

A. Through Mr. Seidel.

Q. What did Mr. Seidel say?

A. Well, he stated that he wanted a man on the counter at all times.

Q. Did he tell you why he wanted a man at the counter at all times?

1021 Mr. Christensen: Object to that. He has already answered.

The Court: Overruled.

Answer that question. Did he tell you?

By the Witness:

A. Yes, he did tell me.

By Mr. Dunau:

Q. Please state what he told you?

1022 By the Witness:

A. They wanted a man on the counter to create a friendly atmosphere between—a friendly and courteous atmosphere between the meat cutters and the customer.

Q. Did he state anything further to you on this matter?

A. Yes, there were more reasons for having a man on the counter.

Q. Would you state what he said to you concerning those reasons?

A. It was to keep the counter straight, perform any



services which the customer might request and fill special requests that the customer might want that she 1023 can't find in the counter.

Q. Did he state to you when he said to keep the counter straight what should be done to keep the counter straight?

A. Well, no; but that is something that every—

Mr. Christensen: All right.

Mr. Dunau: All right. That is all.

Mr. Christensen: I move to strike everything after "No".

1024 By Mr. Dunau:

Q. Just tell us what you did, sir.

The Court: Listen to the questions and answer directly.

By the Witness:

A. I straightened the meat counter.

By Mr. Dunau:

Q. What did you do in straightening the meat counter?

A. I took bloody packages out of the counter and I took torn packages out of the counter; I took packages which looked to be turning color or offbeats off of the counter for reprocessing or for throwing out.

Q. What does it mean to pull a bloody package from the counter?

A. I take a package that could make a mess and take it out of the counter and send it in the back, and if that product is still salable, they will put it in a new tray, a dry tray and send it out, rewrap it and put it in the 1025 counter again.

Q. Now when you find a cellophane torn, the cellophane wrapper on the package torn, what do you do with that?

A. That also has to be pulled and rewrapped.

Q. Where is the rewrapping done?

A. In the wrapping room.

Q. When you stated that some meat had to be reprocessed, will you state what is entailed in that?

A. That would go back to the back room or cutting room.

Q. Now are there reasons for reprocessing meat aside from the spoilage that that meat might be involved in?

A. Only the fact that torn packages or bloody packages.

Q. Do you sometimes have a pork loin roast, which is not moving and then are required to reprocess it into a different item in order to move that meat?

A. That is correct.

Q. Would you explain what is done in that case?

A. Yes. Generally, a man on the counter could use his judgment and when he sees that a particular  
1026 item isn't moving, he can reprocess this thing into something else and thereby stimulate the movement of the item.

Q. Now would you illustrate by a pork loin roast?

A. Yes. For example, you could have twenty pieces of pork loin roasts on the counter and the movement is mediocre, but by taking ten of those twenty pork loin roasts out, slicing them into sliced roasts, you would have two different, completely different items for a customer to have a choice of, and instead of ending up with twenty pork roasts to sell, you have ten roasts and ten sliced chops.

Q. Do you replenish stock in the cases?

A. Yes.

Q. What would be the reason for replenishing stock in the cases?

A. As customers buy, they leave empty spaces in the counter and, of course, you have to fill them in.

Q. At the Rockford stores of Jewel Tea, was there a telephone at the meat counter?

A. All three of the ones I worked for—worked in, in Rockford, had a telephone right behind the meat counter where I could talk to these fellows that were cutting in the back room.

Q. And what was the reason for having the telephone at the meat counter?

A. It seems that—

Q. Do not tell us what it seems. Just tell us the reason.

A. Oh. Their meat cutters were working on the counter and were finding excuses not to be on the counter, and in order to eliminate that excuse, we had telephones so that we could stay right out there and talk to the fellows in the back concerning special requests and concerning things which we needed cut for the counter.

Q. So that as I understand it, the telephone was used by the man at the counter to communicate to the butchers working in the back?

A. That is correct.

1028 Q. Now at the three Jewel stores in which you worked in Rockford, would you please state whether the services that you have described, which were performed by a meat cutter at the counter, were performed between the hours of 6:00 and 9:00 at night?

Q. Do you understand the question?

A. Yes. But the things I described, you mean the torn packages and the disarrangement of the counter and so forth?

1029 Q. That is correct.

A. Yes, these things were performed at that time.

Q. Please state what you have observed while you were in the employ of Jewel concerning customer practices in the handling of meat at the counter?

A. This one particular store that I worked in was quite

notorious for people who would come in and actually throw packages from one section of the counter into another.

Quite frequently I would run into the case where meat is taken out of the meat counter and left on a grocery shelf.

Is that the type of thing that you mean?

Q. Yes. please go on. That is what I am thinking of.

A. I find—in fact, I have even had cases where something in the counter, when it was processed, it was in extremely good condition and it seemed that under cellophane and with about an hour or an hour and a half's time in the counter, I could detect the fact that this piece of meat was going and I have even run into cases and I still run into them now where I will actually see a woman picking a piece of meat up that I feel isn't salable and I will  
1030 stop her, take that away from her or tell her, explain to her that I could get her something that was fresher; that that wasn't quite what I would like to have her buy.

Q. Have you had experience with children at the counter?

A. Yes.

Q. Please state what your experience with children at the counter is.

Q. Just tell us what you saw.

A. Children run up and down the meat counter and poke holes, especially in the hamburger section, right through the package. They do it in any other soft meats that are in the counter also.

Q. Please state whether customers break open the cellophane packages.

A. Again, in certain neighborhoods that I have  
1031 worked in, you have some people that will actually tear a package open to see what is on the other side. For instance, on these sliced pork roasts, they will break

it in half to see how fat each individual pork chop is. I have run into cases like that quite frequently.

Q. Do these things or did these things happen at the three Rockford stores between the hours of 6:00 and 9:00?

A. I can't pinpoint a direct time when it did happen, but some of these items are happening all the time.

Q. And did they happen at the three Rockford stores between 6:00 and 9:00 at some times?

A. At some times, they did, yes.

Q. Did you pay a visit to the Jewel store located at 1755 Indianapolis Boulevard, in Whiting, Indiana, last night?

A. Yes, I did.

Q. What hour did you arrive at that store?

A. 7:30.

Q. And how long did you stay at that store?

1032 A. Only about ten or fifteen minutes.

Q. Were there customers in the store during the time that you were there?

A. In that particular store, there weren't any customers, except my wife and I.

Q. Did you observe the condition of the meat counter in that store?

A. Yes, I did.

Q. What did you find?

A. I found that everything was orderly and the conclusion—no, I can't say that, can I?

Q. Just say what you saw.

A. I saw meat that was on the verge of turning and I pointed things out to my wife. I said to her that  
1033 "Something—"

Mr. Christensen: Oh, oh, no.

The Court: Sustained.



By Mr. Dunau:

Q. Just tell us what you saw.

A. I saw meat that was on the verge of spoiling.

Q. What meat was that?

A. I saw chop suey meat that was spoiled, I saw spare-ribs that were spoiled and I saw beef roasts which were dark but which couldn't hurt anyone if they ate them, even though they were—you can't call them spoiled because they could be reprocessed. These other things couldn't even be reprocessed.

Q. All right. Did you visit a second store last night of Jewel Tea?

A. Yes, I did.

Q. What was the location of that store?

A. It was about 6900 on Indianapolis Boulevard.

Q. And what time did you arrive at that store?

A. Shortly after 8:00.

Q. And how long did you stay in that store?

A. Again, ten or fifteen minutes.

Q. And how many customers were in that store?

1034 A. There were—I would guess about twelve or fifteen that I—

Q. No.

A. Pardon?

Q. 6900 Indianapolis Boulevard, Mr. Santeler.

A. Oh, no, no, that is one that—it had not much business. Two or three, I suppose. There were more customers than the first one. The first one stood out in my mind because I observed none.

Q. Just tell us what you saw in the second store at this point.

A. Two or three.

Q. And did you observe any customers at the meat counter?

A. There were a man and his wife there.



Q. You saw a man and a woman?

A. Yes.

Q. Together?

A. Yes.

Q. Please tell us what you observed as to the condition of the meat counter in that store.

A. The meat was—again, it was orderly. He had less spoiled meat than the first store that I visited, although business seemed to be—

Q. Don't tell us what business seemed to be. Just tell us what you saw at the counter.

A. Where was I?

Q. You said that you saw less spoiled meat than at the first store?

A. That is correct. But I did see some things that I knew were cut the previous weekend.

Q. Did you visit a third store of Jewel last night?

A. Yes, I did.

Q. What was the location of that store?

A. It was on Calumet Avenue, about 70 or 7100.

Q. Was that on Hammond?

A. Yes, it was.

Q. What time did you arrive at that store?

A. Approximately 20 to 9:00, quarter to 9:00, something like that.

Q. How long did you stay in that store?

A. About ten minutes.

Q. About how many customers were in that store during the time that you were there?

A. That store stood out to me because it was—  
1036 Q. Just tell us how many customers were in that store.

A. Ten to twelve.

Q. Were there any customers at the meat counter?

A. No, I can't recall seeing any there.

Q. What was the condition of the meat counter?

A. It was very fresh and very orderly.

Q. What else did you observe at the meat counter?

A. There were two part time boys back in the cutting —no, in the wrapping room of the meat department.

Q. Did you do anything with respect to the persons you saw in the wrapping department?

A. Yes, I beckoned to one of them.

Mr. Christensen: What?

The Witness: I beckoned to one and he came out.

By Mr. Dunau:

Q. And what happened at that point?

A. I asked the young fellow if he had any other rump roasts. I told him that I wanted one that weighed about two pounds.

Q. And then what happened?

1037 A. He went back into the wrapping room, went into what they call a holding cooler and came out with two rump roasts and I selected one and when I took that I asked him if he was a meat cutter and he said no, he wasn't; that he was a part time boy there.

And with that I looked at the meat and set it down on the counter in the particular section that it belonged and I walked out of the store.

Q. Sir, does it require an experienced meat cutter to be able to detect whether the meat is on the verge of spoiling?

A. It certainly does.

Q. Does it require an experienced meat cutter to be able to detect whether the meat has spoiled?

A. Not completely, but, I mean, some customers can even tell if meat is completely spoiled, but there are some customers that can't tell this.

*Cross-Examination by Mr. Christensen.*

Q. Mr. Witness, as I understand your testimony, you resigned from Jewel to take a demotion to go with  
1038 A&P, is that correct?

A. That is correct.

Q. You were dissatisfied with the Jewel organization?

A. No, sir.

Q. But you were willing to take a demotion?

A. Positively.

Q. And how much loss of pay per week did that amount to?

A. By—oh, I'd say when I went to journeyman, I lost about fifteen dollars per week.

Q. You went to journeyman immediately, didn't you?

A. Yes, sir.

Q. When you left Jewel, you were a head meat cutter?

A. Correct.

Q. And when you left Jewel, did you have a job lined up with A&P?

A. Yes.

Q. Who arranged for you to get that job at A&P?

A. I did.

Q. Did you go and talk with someone in the A&P organization before you quit Jewel?

1039 A. Yes.

Q. Who did you talk with at A&P?

A. Mr. Art Thomas.

Q. Where is he located?

A. In Rockford, Illinois.

Q. In Rockford?

A. Yes.

Q. You told him that you wanted to get out of Jewel and would be willing to work as a journeyman to get out of it, to get away from Jewel and go with A&P?

A. That is correct. That is not how I put it. I merely asked him for a job.

Q. Well, in your own mind, you were willing to accept a fifteen dollar a week loss of earnings—

A. Positively.

Q. (Continuing.) —to get out of the Jewel organization?

A. Positively. I would have accepted that even to stay in the Jewel organization.

Q. You were willing to accept that to get out of the Jewel organization under the circumstances?

A. Yes, sir.

1040 Q. And you weren't anxious to change your place of residence or your city in which you worked? You stayed right in Rockford.

A. Positively.

Q. Now, as I understand it, there were more customers in the first store that you visited than in the second store, is that right?

A. No. You understood it wrong then. There were less—there were no customers at all in the first store that I visited.

Q. Well, if you did testify that there were more customers in the first store than the second store, you wish to correct that testimony?

A. If I did, positively.

Q. Because I think you first said that there were no customers and then you made that statement.

In each of the stores you visited, you found that the cases were very orderly?

A. Correct. I didn't say "very orderly," but the one that was very orderly was the third. The first two were orderly.

Q. All right. And in each of them was a fair variety of meats?

1041 A. I didn't say that either.

Q. I did not ask you that. I said in each of them there was a fair variety of meat?

A. Then I would have to say no.

Q. Which one didn't have?

A. The first two.

Q. What was lacking in your judgment that should have been at 1755 Hammond?

A. Well, a more variety.

Q. What particular variety was missing that you think should have been there?

A. Well, if I had been in that particular Jewel market, I would have had eight S boats of pork chops. That is one item.

Q. How many were there?

A. None.

Q. And what else was lacking at this 1755 store?

A. I can't say right now because that is—actually, that is not what I was looking for.

Q. What were you looking for?

A. Just to see if I could get service and to see the freshness and—can I explain why I went there in the first place?

1042 Mr. Dunan: Please just answer his questions.

By Mr. Christensen:

Q. What were you looking for?

A. Just to see the condition of the market and I can't remember right now just what particular cuts were missing. That one I know wasn't there, that 8 S pork chop, because it would stand out because I like—

Q. Well, were pork chops there?

A. Yes, there were.

Q. So what you are saying, it is your recollection that they didn't have any packages in which there were eight chops?

A. No. Eight S is the size of a boat. And you can get anywhere from—

Q. Eight is the size of a boat?

A. Yes. And you can put anywhere from eight to twelve pork chops in that particular boat.

Q. But there were smaller packages of pork chops there?

A. Correct.

Q. Have you ever worked in Hammond?

1043 A. No, I haven't.

Q. Do you have any knowledge as to the customer demand for numbers of pork chops in a purchase in the Hammond area?

A. No, I haven't.

Q. Do you assume that the market manager there knows the quantities of meats that the people in that particular area purchase—

A. Whether that manager knows more, better than I for that particular customer?

By Mr. Christensen:

Q. Yes.

A. I'd say I would imagine he does know if he has been there a while.

Q. Now, at the 6900 store on Indianapolis, where you got there at 8:00 p. m., you again found everything orderly in the counter?

1044 A. Yes.

Q. At the first store, 1755 and 6900 Indianapolis also, the second store, did you spy around and see if you could get someone to give you some service?

A. Yes, I did.

Q. And you were unable to find any?

A. That is correct.

Q. Was that what you were looking for?



A. No: It was merely to satisfy my own curiosity—  
It was to satisfy my own curiosity.

Q. Well, Mr. Witness, before you went out to do this, you talked with some people to arrange for you to make this survey, didn't you?

A. That's correct.

Q. Who did you talk to?

A. Mr. Kelly and Mr. Dunau.

Q. Mr. Dunau?

A. Yes.

Q. And had you ever worked as a detective before?

A. Not up till now.

Q. This was your first experience?

A. That I can recall. I might have tried to—

Q. Now what did this lawyer tell you to look for?  
1045 A. I can't remember him telling me to look for anything. The reason I went there was this: That—

Q. Did you have a conversation with him?

A. Yes, I did.

Q. Where did this conversation take place?

A. It took place in Mr. Kelly's office.

Q. That is on Wells Street, in the City of Chicago?

A. Correct.

Q. Did someone get in touch with you and ask you to leave your pleasant home in Rockford and come out on a rainy, cold night and come down and see Mr. Kelly?

A. I left yesterday afternoon.

Q. Did someone ask you to do that?

A. Yes.

1046 Q. Who?

A. Mr. Saltow, I don't know his title. I think he is president of the local that I belong to, in the Rockford area.

Q. So you went to Mr. Kelly's office?

A. Yes.

Q. What time did you get there?

A. About five to 1:00 yesterday afternoon.

Q. And did you have your wife with you?

A. No, I didn't.

Q. When did you talk with Mr. Dunau and Mr. Kelly?

A. Well, shortly after I arrived there, Mr. Dunau arrived.

Q. When did you talk with him?

A. It must have been from about 1:20 till about 3:30.

Q. Now during that hour or two hours and ten minutes of conversation—

A. Yes.

Q. (Continuing.) —1:20 to 3:30, Mr. Dunau asked you about your history with Jewel?

A. Correct.

Q. And he made notes of it. He made notes of it?

1047 A. Yes, he did.

Q. Now at what point in the conversation—was Mr. Kelly present during all of this time?

A. Yes, he was.

Q. And did he participate in the conversation along with Mr. Dunau?

A. Yes.

Q. At some time during that conversation, they asked you if you would go out and do this detective work, didn't they?

A. No, they didn't ask me that.

Q. Well, when did you first know that you were going out to do this work?

A. It happened this way:—

Q. Please, Mr. Witness, when did you first know that you were going out to do this work?

A. I don't know exactly when. What time, you mean?

Q. Approximately.

A. I don't know exactly what time. It could have been, oh, it could have been 2:30.

Q. 2:30?

A. It could have been that.

1048 Q. And did they discuss with you—tell you that the managers or some personnel from stores in that neighborhood had testified here?

A. What was that again?

Q. Did either Dunau or Kelly tell you that men who worked in those stores had testified here as to evening sales?

A. No, I don't recall that.

Q. They said they would like you to make this observation, however?

A. No. That is not the way they put it.

Q. Well, how did they put it?

A. I tried to tell you before. I was quite surprised. Mr. Kelly made the remark that we had some stores in—not in our particular local, but in the Meat Cutters Union that allowed stores to be open between the hours of 6:00 and 9:00 with no help there, and that amazed me because that was the first time that I had heard this.

And he then suggested that if I had never seen something like this, it might be a good idea for me, being this close to the area, to go down and see this store.

1049 In fact, he told me to go to one store just to look it over. He told me to go to the Whiting store, and I was so close to these others, that it was on my way to this expressway going around Chicago anyway, so I merely shot up this Indianapolis Boulevard, then up to the one on Calumet, and then I was only, I don't know how far I was from the tollway then. Maybe four or five blocks.

Q. Well, Mr. Witness—

A. Yes.

Q. (Continuing.) —where did you learn the location

of these stores? You just didn't happen to see them as you were riding along? You knew—

A. That is correct.

Q. Who told you where these stores were?

A. The Indiana toll gate man, I went to the west point exit of that Indiana tollway and he found that I had gone too far, so he let me go out and come back and go into Calumet Avenue there and he told me to go to—I gave him the address. I had the address of this Whiting store, you see, and I told him I wanted to go to 1755 Indian-1050 apolis Boulevard. So we went up Calumet to 119th Street and I turned right and evidently I went too far and I passed Indianapolis, because it was cutting on an angle and I didn't see the street name.

I came back on 119th until I hit Indianapolis and then I went down a few blocks and there was the Jewel.

For the second one then, I stopped at a Clark gas station and I had to ask there and the fellow was obliging enough to go in and he looked it up in the phone book and he told me, in fact. Otherwise I wouldn't even know what the numbers are, but he told me that the one Jewel is at 69, I believe, hundred, on Indianapolis Boulevard and he told me that the other one was in the 7000 block on Calumet and I knew that that was on my way to the tollway so I stopped in those two particular stores.

Q. So having seen one, you then took it upon yourself to find out where other Jewel stores were?

A. Positively. That is a habit.

Q. And did you do this on your own experience or is the union going to reimburse you for this time and 1051 your gasoline?

A. The union told me that they would pay me for the time that I lost through work by coming down here, but they haven't said anything about expenses like that.

Q. Well, when you came in, did you bring your wife in with you?

A. Yesterday, I did.

Q. When you came in at 1:00 o'clock?

A. Yesterday, yes.

Q. Where was she while you were at the union office?

A. She was at her dad's house. She was at her dad's house.

Q. I see. Now, as a matter of fact, there is a considerable variety of opinion, isn't there, as to the desirability of having beef that is aged?

A. There positively is.

Q. And just because a beef item is old, doesn't mean that it is unsalable, does it?

A. That is what I said.

Q. Now, Mr. Witness, in any of the stores that you visited last night, did you see any children running 1052 up and down the counter poking holes in packages?

A. No. But I did see one hamburger package that did have a finger poked through.

Q. You saw one hamburger package that had a hole in it, didn't you?

A. That is correct.

Q. You do not know how the hole got there?

A. That is correct.

Q. You yourself have never worked in a market where meat was available self-service or after 6:00 o'clock without a butcher being on duty, have you?

A. Correct.

Q. And as the head meat cutter, that is sometimes referred to also as the market manager, is it not?

A. With Jewel he is, yes.

Q. And with Jewel, he is the man who must decide at any given time how many packages of meat to have in the counter? That is his responsibility, isn't it?

A. Correct.

Q. You never had to make a decision at any time as

to how to stock a meat counter for an anticipated  
1053 three hours of business without a butcher in attendance, did you?

A. That is correct.

Q. And, as a matter of fact, the reason that you left Jewel was that you did not like the pressure of a head meat cutter job under the Jewel system of operation? You wanted to get away from that, didn't you?

A. That can't be true because I am a head meat cutter again.

Q. Well, never mind whether it can't or can.

A. Well, it is not true.

Q. That you didn't want to be a head meat cutter?

A. That is not true.

Q. I understood you to say that you would have stayed with Jewel if they would have given you a journeyman job.

A. -No, I didn't say that.

Q. You did not say that?

A. That's right. I said I would take a cut in pay and I would stay with Jewel. You may find it hard to understand because you were bringing out the point that I took a demotion to go to A&P.

1054. Q. Yes.

A. Every year at Jewel we have what we call personnel interviews and the two years previous to my leaving Jewel, in my personnel review, they ask you, "What are your plans with Jewel?"

I told the man that interviewed me, I believe, in one case it was Mr. George Seidel, and I can't remember, it may have been the personnel director the previous year, and I assume they wrote it in my personnel file, I told these people right then that I was interested in learning anything. I told them, and I believe they wrote it in that file, that I would take a cut in pay if they would give me



a job where I could learn anything and I remember distinctly even using an example, that I would take a job as a grocery clerk if I could learn something.

That is what I meant when I—that is why it seemed funny to me when you said, “You took a cut in pay to go to A&P.” The cut in pay didn’t bother me at all.

Q. Well, did you learn more as a journeyman meat cutter at A&P than you had learned as a market 1055 manager at Jewel?

A. No. Positively. I had fourteen and a half years at Jewel and I was learning all the time—

Q. Please, please. You were learning at Jewel, weren’t you?

A. That is correct. Well, I didn’t learn more at A&P in a year and a half, but I didn’t stop learning either.

Q. And you have relatively the same position, as I understand it, in the A&P organization today that you had in Jewel a couple of years ago?

A. That is correct.

Q. Now you testified that one particular store that you worked in was notorious for disarrangement of cases?

A. Yes, it was.

Q. What store was that?

A. It was one that I worked in on Fullerton Avenue, 5600 on Fullerton Avenue.

Q. Stores vary one from the other in the nature of their trade, the customers who come into them, don’t they?

A. That is correct.

1056. Q. Both as to the product—

A. Demands.

Q. (Continuing.) —that the neighborhood buys and as to the way that the customers conduct themselves in the establishment?

A. That is correct.

Q. And it is the province of the management to keep

with the conditions as they exist in these varying neighborhoods, isn't it?

A. It is as long as he follows company policy.

Q. Now, when you referred to a bloody package, am I correct in assuming that what you mean is a package that is perfectly all right, except there has been a seepage of blood from the meat inside the package?

A. You mean if the meat is perfectly all right. The package isn't perfectly all right, but the meat is all right, but the package is sopping wet, you know, with blood. That would be a bloody package.

Q. That is what you referred to as a bloody package?

A. Correct.

Q. And that is simply a matter of—

1057 A. Rewrapping.

Q. Rewrapping?

A. Correct.

Q. Now I had a little tip from Mr. Dunau as to what you said with respect to the telephone at the meat counter in these Jewel stores in Rockford.

A. Yes.

Q. The fact is, as I understand it, that the meat cutters didn't particularly like counter work. They liked to stay in the back room, didn't they?

A. No. You have meat cutters that like counter work and you have some that like cutting meat and some like wrapping.

Q. The object of having the telephone out there—

A. Yes.

Q. (Continuing.) —as I understand it, is so that the head meat cutter could be out in front at the counter keeping a general supervision over things and at the same time telephone instructions back to the back room without leaving the counter, isn't that true?

A. That is true. That is true.

Q. In the stores in Rockford in which Jewel operated between 6:00 and 9:00 at night, did you make any observation as to whether the customers bought any greater, or any lesser proportion of meat to groceries after 6:00 o'clock?

A. I don't know. Maybe if you will repeat it, maybe I will get it.

Q. My question was a difficult one. Let me see if I can make it a little bit clearer.

A. O. K.

Q. I am trying to find out whether you made any observation and can express an opinion as to whether the shopping habits of customers changed after 6:00 o'clock. That is, do you know in a general way roughly what the volume of meat sales were to grocery sales before 6:00 o'clock?

A. Are you asking me this: Do I think that meat consumption per capita is increased because people can buy meat after 6:00, is that what you mean?

1059 By Mr. Duna:

Q. Mr. Witness, I understand you have talked this case over with Mr. Kelly, and I most certainly have not asked you that question.

A. Then I don't understand your question, sir.

Q. Well, in these particular stores, did you ever make any observation as to the volume of meat sales in relation to the volume of grocery sales?

A. That we ran into all the time. I mean that was a figure that I had to keep.

Q. All right.

A. Yes.

Q. Now—

A. We called that per cent of total. Per cent of total business.

Q. Per cent of total?

A. Total business, yes.

Q. Now, did that percentage—if you know, say so; if you don't, say so.

A. Yes.

Q. Did that percentage change after 6 o'clock?

A. Do you mean in comparison to stores that I ran 1060 in Chicago or—

Q. No, no, no.

A. Well, how do you—

Q. I mean in a store in Rockford?

A. Well, these stores were always open, you see, after 9—after 6.

Q. I see.

A. So I would have nothing to compare it except by stores I worked in in Chicago.

Q. Mr Witness, you still don't get what I am getting at. In that store, and any one of these Rockford stores—

A. Oh, wait.

Mr. Dunau: Just listen to the question. Don't guess.

By Mr. Christensen:

Q. Did the total per cent change after 6 o'clock, or did they remain the same, if you know?

A. I don't know.

Mr. Dunau: That is the answer, you don't know.

1061 The Witness: I understand it now.

By Mr. Christensen:

Q. At the 1755 store, did you see any meat that was spoiled?

A. Yes, I did.

Q. What piece of meat did you see that was spoiled?

A. There was chop suey meat and this consists of veal and pork cut in small pieces which were completely unsalable and they were completely unprocessable, reprocess-  
able.

Q. How many packages?

A. I can guess that there were ten. That is all I can

do. I know that there was more than five, but I would say about ten.

Q. The entire display of the chop suey meat was spoiled?

A. No, there were some packages underneath that were fresh. In other words, you had top packages that were spoiled and there were some in the second row underneath that weren't.

Q. You didn't open any of these packages?

A. No, sir.

1062 Q. You could simply tell by looking at them through cellophane that they were spoiled?

A. Positively.

Q. And that was at 7:30 p.m., approximately?

A. Approximately that, yes.

Q. How long does it take a package of meat to spoil, of veal and pork?

A. That is undeterminable for a number of reasons. The first is you don't know when that piece of meat was killed. That is why in processing, sometimes a fellow can think something is fresh. He can get it from the packer today, you see. It looks fresh to him as he is cutting it, and still that packer may have had that particular item for up to ten and even fourteen days. I am not—I know that they could have it to the point where it is not completely fresh. I don't know how long they could hold it without taking a chance on shipping it out, you see. But that particular piece then could be processed and look in fairly good condition, be put out, and within—sometimes within an hour under cellophane then you can tell that that particular item is spoiled. But it takes—well,  
1063 you can't say a certain amount of time for any one particular cut of meat. I can't look at a package—

Q. Have you ever had an instance in your experience where a qualified journeyman member of your Union cut

and wrapped for prepackaging sale a piece of meat and it was immediately placed out on the counter and one hour later you determined it was spoiled meat?

A. I can't pinpoint a particular spot where that happened.

1064 Q. You never had that happen in your whole life, have you?

A. I can't say that, either.

Q. Did you form any judgment last night at 1755 Hammond as to how long that meat had been spoiled?

A. Not how long it had been spoiled. The only judgment I came to is I determined when it was cut up.

Q. You determined when it was cut up?

A. Yes.

Q. How did you determine when it was cut up?

A. Because I have seen the same meat—in other words, I know that if I cut chop suey meat on Friday or Saturday, by the next Tuesday it is turning the particular color that I observed that Tuesday, you see.

Q. You actually can't tell whether the meat is spoiled without opening the package and smelling it?

A. That is not true in all cases.

Q. That is not true in all cases?

A. Yes, sir. That is not true in all cases.

1065 Q. In your judgment, if you had looked at this meat at 6:00 P.M. instead of 7:30 P.M., would it have shown whatever condition it is you claim you observed at—

A. Yes. Yes, it would have. It would have shown it already that particular Tuesday morning, not as deeply as when I saw it at 7:30, but it would have been distinguishable as being on the verge, and practically spoiled then.

Q. Yesterday morning?

A. Correct.

Q. At 9:00 o'clock in the morning, or whenever the market manager looked at it?



A. That's correct.

Q. It would have been observable that those particular packages of chop suey meat should have been removed from sale all day long?

A. I don't know about all day, but for sure he should have seen it by 2:00 o'clock that afternoon. I can say that positively, for sure.

Q. All right. Is that the only meat you saw that 1066 was spoiled, was this chop suey meat?

A. No.

Q. What other meat?

A. Oh, there was spare ribs and that I am almost sure it was in that particular store that I saw the spare ribs, also.

Q. Well, think.

A. I couldn't say for sure. I know I saw spare ribs in one of the first two stores.

Q. Because you are making a very serious charge against members of your own Union?

A. It is in one of the first two stores.

Q. Which one was it?

A. It is not a serious charge because it happens to me, too, where I have to go down my counter and pull some of these things which change color on the spur of the moment.

Q. Well, the chop suey meat didn't change color on the spur of the moment; that was observable yesterday afternoon?

A. At that hour of the day.

1067 Q. What about the spare ribs?

A. I will tell you, when—actually, this is what happened—

Q. No, these spare ribs, which store did you see them in?

A. In either the first or the second.

Q. And you can't tell which one?

A. Right now, I can't say for sure.

Q. Did you make any notes as you came out of the stores—

A. No.

Q. (Continuing.) —to refresh your recollection so you could testify accurately?

A. No, I didn't.

Q. You are just giving us now what you saw in one store or the other or the third one last night?

A. That's right. Certain things stood out in my mind.

Q. It doesn't stand out in your mind—the spare ribs don't stand out clearly enough in your mind so you can tell us where you saw them?

1068 A. No, they don't.

Q. So that wasn't a very disturbing thing to you?

A. No, actually it wasn't. It was something that could happen to any market manager. Like I said, it happened to me. I have pulled stuff like that.

Q. It could happen with ten butchers on duty and it wouldn't be observed?

A. I didn't say that, either. If I am on duty and I spot that stuff, I will pull it out. I don't believe in hoping that some blind man will come along and pick it up.

Q. Have there been times when you discovered that things haven't been spotted for an hour or two?

A. Surely. Sometimes they are—

Q. All right.

A. Sometimes they are—

Q. You have answered it.

One more question, Mr. Witness: It is a fact, is it not, that you left Jewel because you became convinced in your own mind you were at the end of the road there; that

1069 there was no further promotion in store for you at Jewel?

A. That's not why I left Jewel.

Q. They didn't give you an opportunity to learn anything further that would have fitted you for a higher position?

A. That's correct.

Q. And you were convinced that they weren't going to do that, isn't that right?

A. I didn't see it coming, and I had set a specific time, you know, until I would wait. If it didn't happen by then, I would leave, and that time came and I left.

Q. And you were persuaded from such information that—

A. Pardon?

Q. You were persuaded that the Jewel organization felt that you weren't worthy of any further promotion, and you weren't going to get any further in Jewel than the spot you were in, isn't that right?

A. Well, that's never true, not with Jewel. I 1070 mean, I have seen—I have people at Jewel and I can name an instance where the fellow looked like he was out three years ago, and today he is a District Manager, so that is not true. I couldn't feel that way. I don't think I ever felt that way at Jewel.

Q. But you thought you had better make a switch to A&P under the circumstances, and you did?

A. Under what circumstances?

Q. Under the circumstances in which you found yourself, you voluntarily went and sought a position with A&P?

A. Yes.

1072

Thursday, November 8, 1962,  
10:00 o'clock, A.M.

Court convened pursuant to adjournment.

1077 EDWARD VORBECK, a witness called on behalf of the defendants, having been heretofore duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dunau.*

Q. Mr. Vorbeck, if you at any time would like a recess say so, and I am sure the Court will accommodate you.

A. Thank you.

Q. Mr. Vorbeck, I want to show you Defendant Union's Exhibit 10, and you will observe the asterisk opposite some of the stores.

Do the asterisks denote Sunday operations?

A. I am afraid I cannot answer that. I cannot find any double asterisks on the exhibit.

1078 Oh, I am sorry. Yes, on the last page, "Any store open on Sunday," is indicated by an asterisk. The double asterisks do indicate the store is open on Sundays.

1080 Q. Mr. Vorbeck, let's talk about the 1959 negotiations. The employers received a written list of Union contract demands on July 9, 1959?

A. They did.

Q. Were those demands amended on July 21, 1959?

A. Yes, the Union submitted supplementary demands.

Q. Under date of June 4, 1959, were you informed by letter from Mr. Kelly of the Union's desire to open the contracts for negotiations?

A. Yes, sir.

Q. Mr. Vorbeck, I show you what has been marked 1081 as Defendant's Exhibit 34, a letter dated June 4, 1959, from Mr. Kelly, and I ask you whether that is a correct copy of the letter informing you of the Union's wish to open the contract for negotiations?

A. It is.

Q. And I show you what has been marked Defendant's Exhibit 35, and ask you whether these are the contract demands submitted by the Unions on July 9th, as amended on July 27th?

A. They are.

Mr. Dunau: I offer into evidence Defendant Union's Exhibits 34 and 35, your Honor.

Mr. Christensen: No objection.

1082 The Court: They are admitted.

(Said documents, so offered and received in evidence, were marked DEFENDANT UNION'S EXHIBITS NOS. 34 and 35.)

By Mr. Dunau:

Q. Were meetings thereafter held between the employer group and the Union group on the following dates in 1959.

On July 21st?

A. Yes.

Q. On August 18th?

A. Yes.

Q. On August 31st?

A. Yes.

Q. On September 9th?

A. Yes.

Q. On September 25th?

A. Yes.

Q. On November 2nd?

A. Yes.

1083 Q. On December 1st?

A. Yes.

Q. On December 2nd?

A. Yes.

Q. On December 3rd?

A. Yes.

Q. On December 4th?

A. Yes.

Q. On December 8th?

A. Yes.

Q. Was agreement reached on December 8th?

A. Yes, with the sole exception of Jewel.

Q. And the sole exception as to Jewel was reservation concerning night operations?

A. Yes. And also the inclusion of a new clause in it, the no strike, no lock-out clause.

Q. As it pertained to night operations?

A. Yes, that is correct.

Q. And not otherwise?

A. Not otherwise.

1084. Q. Now, at the meeting on August 18th, did the employer group select Mr. Richardson of Wieboldt's as a temporary chairman of that group?

Mr. Christensen: What meeting?

Mr. Dunau: August 18th.

By the Witness:

A. He was selected earlier than that. July 21st.

Q. And how long did he serve as chairman, sir?

A. I think just two meetings, July 21st and August 18th.

Q. On August 31st, was Mr. C. T. Van Ausdale, then of Piggly Wiggly, appointed chairman of the employer group?

A. Yes.

Q. Did he remain chairman of the employer group throughout the remainder of the 1959 negotiations?



A. He did.

Q. As the chairman of the employer group, did he state the position of all the employers unless a particular employer present at a meeting disclaimed that position?

A. Yes, sir.

1085 Q. Prior to the September 25th meeting now, did you prepare a list which you called, "Restrictions in the contracts and the practices of Chicago Meat Cutters Locals."

A. I did.

Q. Was that list distributed to the representatives of the union group at the meeting of September 25th?

A. Yes, sir.

Q. Was the first restriction stated on this list submitted on behalf of the employer group as follows:

"Restrictions on the hours when a market may be open"?

A. I haven't located the list of restrictions, but I am almost dead sure you are right.

(Document handed to witness.)

A. Yes, sir.

Q. Was this list distributed to the union group as a position common to all the employers?

1086 A. If you mean that all employers are asking that all the restrictions be listed, I don't think so. It was merely a list observing what restrictions were contained in the contract. Observing or pointing out would be better words.

Q. Was the objective of the distributing of this list to secure from the Unions agreement upon concessions concerning those restrictions?

A. Yes, sir. They were hopeful that the Union would lift, at least some of them.

Q. And was the hope a position which was common among all the employers?

A. Yes, with varying weight/as to which restrictions that each wanted lifted.

1087 Q. Mr. Vorbeck, I show you Defendant's Exhibit 36 entitled, "Twelve restrictions in the contracts and practices of Chicago Meat Cutters Locals," and ask you whether that is the list that you prepared and was distributed to the union group?

A. It is.

Mr. Dunau: I offer that in evidence.

Mr. Christensen: Well, if it please the Court, I have no desire to keep anything out that is relevant, but here is a study made by Mr. Vorbeck of many matters going to the operation of a meat market, various restrictions upon the way you operate it.

I don't understand the materiality. It is a study that was presented, it was given to the Union. I don't see how it bears pro or con upon the issue before the Court.

Mr. Dunau: Well, certainly, the first—it bears directly upon the issue before the Court, and the rest bears in that they are all interrelated objectives which it was the  
1088 hope of the employer group to secure some relief from in the course of negotiations including the first.

Mr. Christensen: Well, now, you have no such testimony.

Mr. Dunau: I believe we have that testimony from Mr. Vorbeck at this moment.

Mr. Christensen: He said that they were all interested in it, this one to that and the other thing. This was not presented as any official demand by anybody under your own testimony. Now, I don't know where it gets us.

The Court: Well, these were suggestions—

Mr. Christensen: Of Vorbeck.

The Court: (Continuing.) —of Vorbeck prior to the execution of the contract.

Mr. Christensen: Yes.

The Court: But leading up to it. Well, the reiteration of what they are speaking of so far as restrictions as 1089 to marketing hours—

Mr. Christensen: Yes.

The Court: (Continuing.) —would be one. As to the materiality of the balance, I don't know.

However, I don't see any harm in letting it—the Court will admit it in evidence.

(Whereupon said document marked DEFENDANT UNION'S EXHIBIT 36, was admitted into evidence.)

1090 By Mr. Dunau:

Q. At the December 1st meeting, Mr. Vorbeck, did Mr. Kelly state that he was willing to discuss market-operating hours and to bargain on that subject?

A. Yes, sir.

Q. At the December 2nd meeting, did the employer group, through its Chairman, Mr. Van Ausdall—how do you pronounce that?

A. Van Ausdall.

Q. (Continuing.) —Van Ausdall submit a proposal to the Union covering all subjects upon which agreement would be necessary, including, as Item 9, the elimination of all restrictions on market-operating hours?

A. Yes, sir, he did.

Q. Did that proposal also include a provision for a completely flexible work day?

1091 A. Yes, sir, effective, I believe, the second year of the contract.

Q. Did Mr. Kelly respond that he was willing to bargain on the subject of marketing-operating hours?

A. Yes, his response at 2:15 that afternoon was that the Union was willing to bargain with reference to the market-operating hours.

By Mr. Dunan:

Q. At the December 3rd meeting did the employer group make another proposal to the Union group?

A. Yes.

Q. Did Item 11 of that proposal call for the removal of all restrictions on market-operating hours?

A. Yes, sir.

Q. On December 4th, did the employer group make a proposal to the Union group which contained no 1092 request to remove market-operating hours restriction?

A. Yes, sir.

Q. Did the Union respond to that proposal with a 10-point offer of its own?

A. They did.

1093 Q. Did Mr. Kelly, as part of this 10-point response, state that he was willing to bargain on the subject of market-operating hours?

A. Yes, he attended to a statement on ten points, five footnotes, and Note C of his notes:

"Was willing to bargain on market-operating hours."

Mr. Christensen: Well, may I again—is that a "C" you put on, or was it a footnote to—a footnote to me denotes a written document.

The Court: That is a note you made?

The Witness: This is the way Mr. Kelly outlined it, Notes A, B, C, D, and, I believe, E.

Mr. Christensen: These were oral—

The Witness: I wrote it down the way he gave 1094 it.

Mr. Christensen: These were oral notes, oral footnotes, then?

The Witness: Yes, sir.

Mr. Christensen: All right.

By Mr. Dunau:

Q. Now, Mr. Vorbeck, did the 1957 agreement contain this provision:

"Eight hours shall constitute the basic work day. Work shall begin at 9:00 A.M. and shall cease at 6:00 P.M."?

Mr. Christensen: Don't we have that agreement in evidence?

Mr. Dunau: Yes.

Mr. Christensen: Well, I suggest you show it to the witness and not ask him to remember it by heart.

1095 Mr. Dunau: In evidence as Plaintiff's Exhibit 5 is the 1957 agreement, Section 1 of which states:

"Eight hours shall constitute the basic work day. Work began at 9 A.M.,—"

Mr. Christensen: Section 1 of what?

Mr. Dunau: Section 1 of Article 4.

"Work shall begin at 9 A.M., and shall cease at 6 P.M."

By Mr. Dunau:

Q. In 1958, in the 1958 agreement in evidence as Plaintiff's Exhibit 7, Article 4, Section 1 states:

"Eight hours shall constitute the basic work day, which shall be scheduled to begin no earlier than 8 A.M. and to end no later than 6 P.M."

Mr. Vorbeck, what was the consequence of the change from the starting time from 9 A.M., to 8 A.M.?

A. It gave us one more hour in which we could schedule the work day.

1096 Q. In the 1957 agreement, could you call an employee in earlier than 9 A. M.?

A. No, I don't think so.

Q. You could call him in if you were willing to pay time and a half for the hour, is that correct?

A. That is correct.

Q. And the consequence of the 1959 change is that you could call him in during that same hour, but you did not have to pay him time and a half, is that correct?

A. Yes. I think the overtime provisions would tell us exactly.

Q. The consequence then was the concession by the Union between the hours of 8 and 9 A. M., is that it?

A. I don't know what the concession was but—yes, you might say that.

Q. And was this an agreement which granted the employer group a limited flexible work day?

A. Yes, sir.

Q. Let's go to 1961 negotiation, Mr. Vorbeck:

Did the Union group, in 1961, present its contract demands to the Employer group on July 27, 1961?

1097 A. Yes, sir.

Q. I show you what has been marked as Defendant Union's Exhibit 37, and ask you whether those are the contract demands submitted by the Union group to the Employer group on July 27, 1961?

Mr. Christensen: I am going to object to this question. I fail to see the relevancy of it to this issue.

The Court: What is the materiality of it?

Mr. Dunau: We are charged, your Honor, with a conspiracy and restraint of trade in combination with  
1098 Association Food Dealers, Incorporated.

Mr. Christensen: And others.

Mr. Dunau: And no others in that complaint.



Mr. Christensen: And others.

Mr. Dunau: There are no others in that complaint and the complaint will speak for itself.

Mr. Christensen: Read it.

Mr. Dunau: I have read it many times.

One purpose of this exhibit, and of going through the 1961 negotiations as we went through the 1957 and 1959, is to show not in combination with any employer group, but legitimate, arms-length collective bargaining at which the Union had certain objectives, the Employer group had certain objectives and they bargained to the best of their ability to reach accord on these issues.

The Court: I think it should be received. Overruled. Admitted.

1099 (Said document marked DEFENDANT UNION'S EXHIBIT 37, was admitted into evidence.)

By Mr. Dunau:

Q. Did a negotiating meeting take place on August 22, 1961, between the Employer group and the Union group?

A. Yes, sir.

Q. On the day preceding that meeting, on August 21st, was there a meeting of the Employer group alone?

A. There was.

Q. Were you selected as the permanent chairman for the Employer group for the course of the 1961 negotiations?

A. I was.

Q. Was a steering committee selected to guide and assist you?

A. Yes, sir.

Q. Would you state what persons were on this steering committee?

A. My notes for the 21st show that the committee  
1100 was made up of alternatives, Joseph Quirk or Bob Cone of Jewel Tea, constituted one member with an

alternate. E. S. Stern represented High-Low or A. K. Shell represented Hillman's, the second members.

Q. Would you slow it down on the names so that the Reporter could get it, please?

A. C. H. Bromann, or Ed Shear representing the Associated Food Retailers of Greater Chicago.

I believe it is Morris Geifman, G-e-i-f-m-a-n, of Eagle United. His alternate was W. R. Bedell of Kroger.

From my own company, myself and Mr. Brewer, who was my alternate.

From A & P, Adolph Ernst with Bert Collins as his alternate. That's all.

Q. Thank you.

Now, in the course of the 1961 negotiations, did you state the position of the entire Employer group unless a particular employer representative present at a meeting disclaimed that position?

A. That's correct, or unless he was not present.

1101 Q. Or unless he was not present at the meeting?

A. Yes, sir.

Q. At the meeting on August 21st, among the employer group alone, were you requested to work up a list of what the Union—of what the employer group regarded as restrictions on the contract?

A. I don't know whether I was requested, or whether I just worked them up.

Q. Do you find anything on that in your notes, sir?

A. No, sir.

Q. Let me read to you from Pages 188 to 189 of your deposition:

“Q. —

Mr. Christensen: What page, counsel?

Mr. Dunau: 188 to 189, pertaining to the meeting among the employer group on August 21st.

By Mr. Dunau:

Q. (Reading.):

"Q. Was there any discussion of the subject of market-operating hours?"

"A. I note no comments on my notes. I don't  
1102 have any recollection that we did discuss it particularly, except that I was once again requested to work up list of restrictions in the contract which I did, and I find copies of those restrictions in this file revised as of August 21, 1961."

Isn't that correct, sir?

A. I think my testimony at that time was correct, so I must have done it pursuant to request.

Q. Did that list again contain an objection to the market-operating hours' provision?

A. Yes, sir.

Q. Was a meeting held between the employer group and the Union group on September 12, 1961?

A. Yes, sir.

Q. Before the meeting on September 12th, was there a meeting among the employer group itself, either on September 12th or sometime before then?

A. I have no notes of any meeting. There might have been prior to the Union coming in.

Q. Do you recall a meeting among the employer  
1103 group before you met with the Union group on September 12th?

A. I cannot be exact as to the date.

There was another meeting of August 21st, I do recall. There were at least probably two meetings, and during that period of time I drafted a contract which was substantially revised.

Now whether it occurred prior to September 12th, I am not at all clear.

Q. Well, you did draft a contract. is that correct?

A. Yes, sir.

Q. A contract proposal, that is?

A. A contract proposal.

Q. And that contract proposal was submitted to the Union group on September 12th, is that correct?

A. Yes, sir.

Q. And before it was submitted to the Union group it was discussed at a meeting of the employer group, is that correct?

A. Yes, sir.

1104 Q. Was it composed of the steering committee that had been selected?

A. Yes, sir. I won't say that all members of the steering committee were present, but I think that five or six were present.

Q. Do you recall who was there, sir?

A. Partially.

1105 Q. Tell us who you recall being present?

A. Joseph Quirk of National Tea; Adolph Ernst of A&P; I was there, of course, and I think Mr. Brewer of our company was there.

I believe the Kroger Company had one representative, probably Mr. Bedell.

I don't know whether Mr. Bromann was present at that meeting, but he did see the contract draft prior to its going in.

Beyond that, I don't recall who was present.

Q. All right.

Now, among those who were present, was the contract draft gone over?

A. Yes, sir.

Q. What was done with respect to it by those that went over it?

A. Quite a few changes were made.

Q. Was it put in a form that was satisfactory to the group for presentation to the Union group?

A. Yes, sir.

Q. And Mr. Bromann saw it in that form, is that correct?

1106 A. He may have contributed to the form. I don't recall exactly.

Q. He may then have participated in the discussion, is that correct?

A. Yes, sir.

Q. Was this contract proposal submitted by the employer group to the Union group on September 12, 1961?

A. Yes, sir.

Q. Please state who was present on behalf of the employer group on that date.

A. I don't have a single note on that.

My first quite complete notes on who were present starts with the September 29th meeting, at which time the Union had circulated a list. I should have had notes, but as Chairman, I was not taking care of the clerical duties, so I don't recall who was present.

Q. Was Mr. Bromann present?

A. I don't recall. I assume he was, but I don't know.

1107 Q. Did Mr. Bromann—

Mr. Christensen: Wait a minute. I move to strike out the assumption.

The Court: Sustained.

By Mr. Dunau:

Q. Did Mr. Bromann concur in the presentation of the employer contract proposal to the Union group?

A. Yes.

Q. And was it presented to the Union group on September 12, 1961?

A. Yes, sir.

1108 By Mr. Dunau:

Q. I show you what has been marked as Defendant Union's Exhibit 38, which has a date of September 11, 1961, at the left-hand margin, and ask whether that is the contract proposal which was submitted by the employer group to the union group on September 12th?

A. It is.

1109 Mr. Dunau: I offer that in evidence, your Honor.

The Court: Any objection?

Mr. Christensen: No.

The Court: Admitted.

(Whereupon said document marked as DEFENDANT UNION'S EXHIBIT 38, was admitted into evidence.)

By Mr. Dunau:

Q. Did Defendant Union's Exhibit 38, the contract proposal submitted to the Union group on September 12th, contain any provision pertaining to market opening hours?

By the Witness:

A. No, sir.

Q. Was the consequence of the omission of any provision pertaining to market opening hours to leave that subject to the discretion of the employer?

A. Yes, sir.

Q. Did Mr. Kelly on September 12th, state that he  
1110 was not closing the door to negotiations on market opening hours?

A. Yes, sir.

Q. Were meetings thereafter held in 1961 on the following date: September 20th?

A. Yes, sir.

Q. September 28th?



A. Yes, sir.

Q. September 29th?

A. Yes, sir.

Q. October 4th?

A. Right.

Q. October 13th?

A. Yes, sir.

Q. November 1st?

A. Yes, sir.

Q. At the meeting on September 29th, did Mr. Kelly ask the Employer group for a breakdown of its demands?

Mr. Christensen: Which meeting, counsel?

Mr. Dunau: September 29th.

By the Witness:

A. I have no note to that effect.

1111 By Mr. Dunau:

Q. You don't recall whether he asked for such a breakdown independently of a note?

A. No, sir. I have—

Q. Just answer that question. You don't recall?

A. No, sir.

Q. On October 17, 1961, Mr. Vorbeck, did you make a report to Mr. Hargrave on the negotiations?

A. Yes, sir.

Q. Did that report include a statement concerning market opening hours?

A. Yes, sir.

Q. Please read what you reported to Mr. Hargrave on that subject on October 17th?

Mr. Christensen: I ask that the witness be permitted to read the entire relevant portion.

Mr. Dunau: Exactly, sir.

By the Witness:

A. With reference to night marketing hours, the report reads as follows:

1112 "The sub-division in the industry likewise shows up with respect to night operations. Here we are not encountering any opposition from the Associated Food Retailers whose representative has officially, possibly for the purpose of the litigation, stated that his membership were interested in three nights of operation, Mondays, Thursdays, and Fridays. On the other hand, the other major chains seem opposed to any discussion of the basis on which night operations can be had, although they joined with Kelly in stating their willingness to discuss night operations. For example, when I submitted a journeyman on duty contract provision, similar to that which we have in Local 350, Gary-Hammond, which has produced a lower wage cost for us than a more onerous requirement in our Joliet contract, the industry refused to permit me to offer it as an industry proposal."

1113 Q. Do you have a further reference in that memorandum on the subject, sir, on the last page, sir?

A. Yes, sir.

Q. Please read that.

A. "The principal demands which employers are seeking are: One, a new classification of meat clerks, preferably female, who will not progress into the journeyman classification; two, the redefinition of a jurisdiction clause to restrict the Union's jurisdiction to processing of fresh meats 'and such other processing of such other meat as the employer may assign' to the Union. We have eliminated the Union's jurisdiction over sale. Incidentally, George Christensen, of our attorneys, is very interested in our draft of jurisdictional provision, particularly the elimination of the

Union's jurisdiction over sale. He points out that the sale is never made in the meat department, that it is made only at the check-out desk when a customer hands over the money for her purchases. Three, greater flexibility in scheduling the work day which is now limited to 8 A. M., to 6 P. M. Four, complete removal from the contract of all restrictions on market operating hours. Five, elimination of automatic retroactivity of wage increases for ninety days following the contract expiration."

1115 Q. Now, I believe you testified that a meeting between the employer group and the Union group was held on November 1st, correct?

A. In '61?

Q. 1961, yes.

A. November 4th. I have none on November 1st.

Q. Do you have a notation that you had a meeting on October 13th?

A. Yes, sir.

Oh, I am sorry. I was looking at October 4th here. November 1st is correct.

Q. Now, prior to the meeting on November 1st, was there a meeting among the employers?

A. There was a sub-committee meeting back on October 25th with a sub-committee of the Union.

Q. No, I am talking about a meeting of the employer group alone, sir.

Mr. Christensen: On November 1st?

Mr. Dunau: Yes, either on November 1st or on a day preceding November 1st.

By the Witness:

A. I find no notes on such a meeting. I think there was one that morning, because the Union didn't come in until 2:20 in the afternoon.

Q. What was discussed at that meeting in the morning of November 1st?

A. I haven't got a single note on it.

Q. Do you recall independently of any notes?

A. No, sir.

Q. Let me read to you from your deposition on Pages 201 to 202:

"Q. All right.. When was the next meeting between the employer group and the local Unions?

"A. November 1, 1961.

"Q. Had there been a prior meeting amongst the employer representatives?

"A. Not prior, but there must have been a meeting of the employer representatives only in the morning. I notice I have the notation that the Union came over at 2:20 in the afternoon.

"Q. During the morning was there a discussion 1117 of market-operating hours amongst representatives of the employer group?

"A. I have no notations as to what we discussed. I do know that we were divided in our approach on health and welfare, as we were throughout the negotiations.

"Our meeting on that date with the Union was very short, from 2:30 to 3:10, and the employers continued from 3:10 to 3:50, and my only notation is that we were trying to find a common ground on health and welfare and market-operating hours.

"Q. Now, did your notation of attempting to find a common ground—a common meeting ground on the subject of market-operating hours pertain to discussions among employer representatives?

"A. Yes."

Is that an accurate statement of what transpired?

A. That is accurate.

1118 Mr. Christensen: Please, please. I suggest you complete—

Mr. Dunau: If there is anything else you want me to read, I will be perfectly happy to.

Mr. Christensen: Yes, continue, please.

Mr. Dunau (Reading):

“Q. Do you recall what that discussion was?

“A. No, sir.”

Is there anything further you want me to read?

Mr. Christensen: No.

By Mr. Dunau:

Q. Does that accurately state what transpired on November 1st, sir?

A. Yes, sir. To the best of my recollection, sir.

1121

Wednesday, November 28, 1962,  
10:00 o'clock, A.M.

Court convened pursuant to adjournment.

1126 EDWARD VORBECK, having been previously duly sworn, resumed the stand and testified further as follows:

*Direct Examination by Mr. Dunau (Continued).*

Q. Mr. Vorbeck, was a meeting held between the employer group and the union group—

Q. Was a meeting held between the employer group and the union group on November 2, 1961?

A. Yes, sir.

1127 Q. On that day, did you propound a hypothetical question to the union group on the subject of market-operating hours?

A. Yes, sir.

Q. Did you propound this question on behalf of the entire employer group?

A. Yes, sir.

Q. Would you please state what that question was?

A. I asked Mr. Kelly to make the following three assumptions:

1)... That all provisions of the contract, namely, wages, health and welfare, vacations, et cetera had been settled;

2). That the industry reached agreement to limit the sale of fresh meat to three nights a week, Monday, Thursday and Friday, and that no Sundays and—that's 2, and that,

3). Jewel offers to drop its suit without prejudice and agrees not to reinstitute it during the term of the contract if the industry offer of night operations is accepted.

1128 Then I asked under what conditions will the union be willing to recommend that the hours when fresh meat may be sold, be extended to Mondays, Thursdays and Fridays to 9:00 P.M.

Q. Mr. Vorbeck, when you stated as the first assumption that all provisions of the contract, wages, health and welfare, vacations, et cetera have been accepted, did you state all provisions had been settled except market-operating hours?

A. Well, that was the intent.

Q. Now, did the union, after you propounded this question, take a thirty-five minute recess?

A. Yes, sir.



Q. Did Mr. Kelly return and respond to the hypothetical question that had been put by you?

A. Yes, he did.

Q. What did he state?

A. One, the assumptions are loaded; two, to negotiate night hours on the limited basis of three nights a week is unrealistic and would be conspiring with a group of employers to limit operations to certain nights and 1129 certain hours; three, the union is willing to negotiate for seven days each week and twenty hours per day of operation; and, if all employers as a group, present such a demand, the union would react with a demand covering such requests; four, the above premise of the assumptions tendered by the employers.

Q. At that time, did the union group leave the meeting?

A. Yes.

Q. Was a discussion then held among the employer group?

A. Yes, sir.

Q. Please state what that discussion was?

A. Well, No. 1, summary by Mr. Stern of Hi-Low to the effect that Mr. Kelly's position amounts to this:

That any restriction on night-operating hours is illegal; and the second thing I remember is we still didn't know where we were, and as a result, we sent a sub-committee out to explore it.

1130 Q. When you say you sent a sub-committee out to explore it, who was on that sub-committee?

A. From the employers, Joseph Porte of National Tea and Adolph Ernst of A&P.

Q. And did these two people then meet with the union group?

A. With a sub-committee from the union group, Mr. Kelly, Mr. Neilubowski, and Mark Allen.

Q. Were you present at this sub-committee meeting?

A. No, sir.

Q. Did the employer representatives report the discussion that was held at that meeting to you?

A. Yes, they did.

Q. What did they state?

A. Well, I can only state their summary. Their summary was that the union's response was—they were not favorable to night—excuse me just a second.

They were not favorable to nights under any circumstances, Point 1; 2, the demand for nights will have to come from the entire industry and must provide 1131 for seven days and nights of operations; in other words, must not include any limitation as to hours; and, 3, if such a demand of received, the price will be stiff.

Q. Was a meeting held of the employer group and the union group on November 3, 1961?

A. Yes, sir.

1132 Q. Did the employer group on that day make your proposal which did not contain any modification of the existing provision pertaining to market operating hours?

A. They did.

Q. Was another meeting of the employer group and the union group held on November 13, 1961?

A. Yes, sir.

Q. Was there a meeting of the employer group alone on that date?

A. Late in the afternoon there was.

Q. At that meeting—

A. (Continuing.) There was, too, you might say during various periods of recess during the day, but not much took place.

Q. All right, now, at the meeting of the employer group did you inform the employer group that Jewel planned to make a proposal on behalf of itself on the subject of market operating hours?

A. On November 13th? I certainly did.

Q. Did you tell the employer group that any employer was free to join that offer with you?

1133 A. Yes, sir.

Q. Did you distribute the offer that you proposed to make to the union group to the employers?

A. Yes, sir.

Q. I show you what is Plaintiff's Exhibit 10, and ask you whether that is the paper which you distributed to the employer group at that time?

A. Yes, sir, this is it.

Q. Did any employer on that date join with you in this proposal?

A. No, sir.

Q. Did you make this offer to the union group on that date?

A. No, sir, we did not.

Q. Why not?

A. That particular session was a rather stormy session. Matters that had been explored on the deposition of Mr. Kelly were brought forth, and I, as chairman of the union — of the employer group was criticized by both members of the union and by certain employers.

Mr. Christensen: May I interrupt, Mr. Dunau?  
1134 You say his deposition. You mean a deposition he had shortly before that given in this case?

The Witness: Yes, November 6th, to be exact.

By the Witness:

A. (Continuing.) —and it just didn't seem timely to present it to the union. We were having enough trouble on another major issue, which was health and welfare.

By Mr. Dunau:

Q. Well, is it fair to say that the trouble on the other issue pertaining to health and welfare induced you to refrain from making this proposal at this time?

A. Not alone, no. I just didn't—

Q. Was it a substantial part of the reason why you did not make the proposal on the subject of market operating hours at that time?

A. It was undoubtedly a factor, but I still wanted the union in a more receptive mood of mind than they obviously were at the moment.

1135 Q. As I understand it, you refrained from making this proposal to the union group at that time because you did not think they were then in a receptive frame of mind?

A. That's very true.

Q. Now, on November 16, 1961, was another meeting held between the employer group and the union group?

A. Yes, sir. This was our final meeting as far as negotiations were concerned.

Q. That is, this was the final meeting of the 1961 negotiations?

A. Right.

Q. Between November 13th and November 16th had you been informed by any employer that that employer was joining with Jewel in its proposal on market-operating hours?

A. No, sir.

Q. On that day was a proposal made by the employer group—

1136 Q. (Continuing) —looking toward settlement of all the issues which were in dispute in the negotiations?

A. Yes, sir.

Q. Did that proposal retain the market-operating hours provision as it had existed until then?

A. Yes, sir.

Q. Did Jewel Tea agree with that proposal except for health and welfare and market-operating hours?

A. Yes, sir.

Q. What was the basis for Jewel's disagreement on the subject of health and welfare?

A. No, I believe that Jewel was still with the industry on health and welfare at that point. That was made about 2:30 in the afternoon.

Q. Well, at that point, Mr. Vorbeck, had the 1137 employers agreed that there would be no contribution by the employees to a health and welfare fund which would be set up on a joint employer-union basis?

A. No, not at that point. We were still holding out for our plans. I think our company particularly was holding out for a plan on a contributory basis.

Q. All right, let's take it, then, as the position on health and welfare as it was finally evolved on November 16, 1961.

What was the employer group's position on that subject?

A. Jewel alone accepted. We agreed to pay into a jointly administered health and welfare trust fund the sum of \$21 for a full time employee per month, or to maintain our own health and welfare program on a cost-free basis, except as to optional life insurance, whichever the majority of our own people would decide, the majority of our eligible employees would decide, which means the full-timers.

At that point I did not have authority from our company to agree to provide our plan cost-free so I had 1138 to except from that also.

Later on we did join the industry. That was subsequent to this meeting.

Q. But at this point, as I understand it, there was a proposal for either, 1, a jointly-administered health and



welfare plan, or, 2, an individual company plan, is that correct?

A. Yes, sir.

Q. And the employees of each employer would then further decide whether they wanted to participate in the jointly-administered fund or in the individual plan of the employer?

A. That is correct.

Q. And at this point you still had no authority to agree on behalf of your company to either plan which would be cost-free to the employees?

A. I could agree on the industry plan if our people so voted. I mean, the jointly-administered plan.

But I couldn't agree on the provision of our own plan cost-free.

Q. In other words, the point at which you still 1139 had no authority to agree was that if Jewel's employees were to vote to remain with the Jewel plan, you had at that point no authority to say that the Jewel plan would be cost-free to your employees?

A. That is correct.

Q. This was the basis of Jewel's disagreement with the industry proposal on that date, is that correct?

A. That is one basis. The other one was night operation.

1140 Q. The other one was night operations?

A. Yes.

Q. Mr. Vorbeck, I show you what has been marked Defendant Unions' Exhibit 39 for identification,

"Memorandum of settlement agreement reached November 16, 1961."

Do you recognize that, sir?

A. Yes, sir. It is one I drew up.

Q. And did that reflect the agreement reached on that



date between the employer group and the union group, except for Jewel Tea on the two subjects which you have identified, Health and Welfare and Market Operating Hours?

A. Yes. It even sets out our disagreement with it in Point 14. This is correct.

1141 Mr. Dunau: I offer Defendant Unions' Exhibit 39 into evidence.

Mr. Christensen: No objection.

The Court: It is admitted.

(Said document which was marked DEFENDANT UNIONS' EXHIBIT 39, was received into evidence.)

By Mr. Dunau:

Q. Now, on November 16, 1961, did you present to Mr. Kelly Jewel's proposal on market operating hours?

A. I did.

Q. And is that the proposal which you had previously distributed to the employer group?

A. Yes, sir.

Q. Did you ask Mr. Kelly to present this proposal to his members at the—to the members of all the defendant local unions—at the contract ratification meeting which was to be held between all the members?

A. Yes, sir.

Q. Did you ask him to submit it with a favorable recommendation?

1142 A. Yes, I am sure I did, because without it it wouldn't go through.

Q. Did you also ask him to submit it even without a favorable recommendation?

A. Yes. I would like it to go through, regardless.

Q. You wanted it submitted to the membership either with or without a favorable recommendation?

A. Preferably with, but in any way.

Q. Did Mr. Kelly agree to submit this to the membership?

A. I don't recall any exact discussion from Mr. Kelly. I know that he did present it, or he so reported to me.

Q. He didn't disagree with you when you asked him to present it?

A. This was at the conclusion of a very long, harassing day and we were breaking up at the time that was given. It was done with the knowledge of everyone, that I was going to do it. But that's about all there was to it.

Q. Now was a—were ratification meetings held on November 26th, among the members of the defendant 1143 unions?

A. So reported to us by Mr. Kelly.

Q. On November 27th, did Mr. Kelly report to you concerning the vote that the members had taken on the Jewel proposal?

A. I'm not sure whether he did or who did, but I knew it, because I wrote a memorandum a short time later summarizing the settlement.

Q. What did you know on November 27th?

A. I am almost sure he must have called me. But one of my own men was there, because he is a journeyman meat cutter. He has a card. He had a right to vote.

Q. What did you learn happened at the meeting?

A. Both proposals submitted by Jewel with respect to night operations were rejected.

1144 Q. By the members?

A. Yes, sir.

Q. On January 2, 1962, did you make a telephone call to Mr. Kelly?

A. I have no notation that I did, but I do have a notation that as of that date we had agreed to accept the language agreed upon between the union and the balance of the industry. So I must have called him.

Q. Then, on that date, you informed Mr. Kelly that the Jewel was going along with the agreement which had been reached by the employer group and the union group?

A. Yes. I am sure it was subject to our usual standing objection.

Q. But at that time you acquiesced for example, in the Health and Welfare agreement, which had been made by the employer group and the union group?

A. Yes, sir.

Q. And the agreement that you entered into in 1961, contained the provision pertaining to market operating hours, did it not?

A. As I recall, it made no change of substance.

1145 Q. And you entered into the agreement containing that provision?

A. We did.

Q. Now, as I understand it, Mr. Vorbeck, in the Chicago area the grocery departments of Jewel Tea are open to 9:00 P. M., some of them, one day a week, some two days a week, some five days a week and some grocery departments are not open at all at night, is that approximately the situation?

A. Very few are not open at all. There might be five or six. The rest of your statement is correct.

1146 Q. Who—

A. The rest of your statement is correct.

Q. Now, who decides for Jewel Tea whether a particular store, the grocery department in that store, shall be open one night, two nights, more than two nights, or no nights at all?

A. The executives of the Operating Division, both of whom have testified in this case, Mr. Brewer of the meat side, and Mr. Woerthwein for the grocery side.

Q. Do they decide which stores shall remain open?

A. They don't decide it alone. They have the recom-

recommendation of the grocery manager, I am pretty sure, and the district—or the divisional manager now.

Q. Now, is it the grocery manager's recommendation which is the predominating reason in determining whether the store will be open or not open?

A. I don't know that. I am not a party to the procedures involved, and I take no part in the discussions; so

I do not know which is the predominating decision 1147 or recommendation.

Q. Mr. Vorbeck, in your deposition, at Page—

Mr. Christensen: May I have the page, Bernie?

Mr. Dunau: Yes, 125 to 126, where the following question and answer appear:

“Q. Would the company have records from which it could ascertain with some exactness what the situation was in 1957?

“A. I would question that they would on that particular issue. It is not of permanent importance to the company, and I have to have an up-to-date survey made even today to find out how many are open, and usually they have to send out to the stores to find out because the individual store managers along with their divisional supervision are given quite a bit of discretion as to whether they will be open at night or not.”

Now, is it accurate that the individual store manager, along with divisional supervision, is given quite a bit of discretion as to whether the individual store will be open or not?

A. He could never act without the approval of the divisional manager, so it is the divisional manager with whom the authority rests. The grocery manager has the right and his recommendation is undoubtedly given weight. You can't say that just he has the final discretion, because I don't think he has.

Q. But the two together?

A. Yes, subject—it is all subject, again, to review by Mr. Woerthwein.

Q. But if the two together were to decide that the store were to remain open, that is the effective decision, is it not?

1149 By the Witness:

A. I would say it is the effective decision until reversed.

By Mr. Dunau:

Q. And is it reversed usually?

A. Based upon operating conditions, it may be cut down. If they find out that five nights aren't desirable, aren't profitable, they will cut it back to two, three, whatever is desirable.

Q. Mr. Vorbeck, is it accurate to state that in general, all stores in a competitive area operate the same number of hours?

A. I don't think I am qualified to answer that.

Q. Did you make such an answer in your deposition?

A. I probably did. It is just my own supposition to what I think would be the condition.

Q. At Page 133 of your deposition, the following question and answer appears:

“Q. In general, is it true that all stores in a competitive area operate the same number of hours?”

“A. As a general rule, it is true, but it is subject to exceptions. If a shopping center doesn't open until noon, a meat market normally will not open until noon though it is permitted to do so.”

Is that answer your best judgment and information on the subject?

A. That is still correct.

1151 Q. The answer is still—

A. To my best judgment.



Q. Is it accurate to state that with only a few exceptions, in those stores where meat departments, those stores of Jewel where meat departments are open after 6:00 P.M., meat cutters are on duty?

1152 A. You have a variation by area. Our Will County stores are required by contract to have a journeyman on duty, so we have one on duty.

1153 By Mr. Dunau:

Q. Just answer the question at the moment, Mr.—

A. I can't give you a flat answer.

Mr. Christensen: I object to lecturing the witness. May he be permitted to continue with his answer and not be interrupted by counsel.

The Court: Have you completed your answer?

The Witness: If I may continue?

The Court: You may.

The Witness: In Gary-Hammond, we know that on two nights a week they do have and they may have on additional nights when the demand is there, but they don't always.

In the Kenosha stores and Crystal Lake, I think we are only open one night a week in Crystal Lake, and we have a man on duty there.

I don't know about Michigan City or Benton Harbor, but for the most part we are required to have someone on duty by union contract. I think the only exception is Gary-Hammond.

1155 By Mr. Dunau:

Q. Mr. Vorbeck, at Page 134, you again give this question and answer in your deposition:

"Q. Now, in those stores where meat departments are operated after 6:00 P.M., are meat cutters on duty?

"A. With only a few exceptions, yes, and let me illustrate.



1156 "In Lake County, Indiana, we are required to have a meat cutter on duty only on Thursdays and Fridays. We are usually open five nights a week. We usually have a meat cutter on duty on Monday and Tuesdays, in addition to Thursdays and Fridays.

"Wednesday is a pretty light night, and some of our markets will not have a meat cutter on duty on those nights."

Is that an accurate answer?

A. It was my answer. Whether it was accurate or not, I don't know.

Q. Was it an accurate answer as far as you know?

A. Well, yes, but I have never been out there at night.

Q. Did you make this question and answer which also appear on Page 134, Mr. Vorbeck:

"Q. Barring exceptions like that which you have just mentioned, is it generally true that a meat cutter is on duty when the meat department is operated?

1157 "A. If there is the volume or the contract requires it, a meat cutter will be on duty."

Is that an accurate answer?

A. I think it is reasonably accurate, yes.

Q. Is it always accurate to state that when a meat cutter is not on duty in the meat department and it is open after 6:00 P.M., business is light?

A. Yes, sir.

1158 Q. Now, in 1957, in the course of the negotiations during that year, did the proposals made for the operation of a meat department after 6:00 P.M., pertain to both service markets and self-service markets?

A. I believe they pertained to both, but my memory is a little hazy.

My best recollection at this point, without going through all my 1957 notes, is that they did pertain to both.

Q. Now is it accurate to state that in the 1959 pro-

posals, the proposals made with the operation of a meat department after 6:00 P.M., pertain to both service departments and self-service departments?

A. Yes, sir.

Q. Your answer was, "Yes, sir"?

A. Yes.

Q. In the 1961 negotiations, except for the proposal which Jewel Tea made on its own behalf, did all proposals which were made for the operation of a meat department after 6:00 P.M., pertain to both service and self-service meat departments?

1159 A. They did.

Q. Are there customers that prefer to do their shopping in a service market?

A. I would assume, yes.

Q. Why?

A. The personal attention of the butcher enables them to get a specific cut that they like, the specific amount of weight, particularly if the selection in the counter is not sufficiently large and possibly the cut isn't even displayed. He can then go get it for them.

Q. Is custom cutting in a self-service meat department designed to provide this kind of personal service which is available in a service meat department?

A. Yes, sir.

Q. Mr. Vorbeck, as you note Section 4.4 of the current agreements provide that:

"At the employers' discretion overtime at overtime rates may be worked after eight hours in any one day and behind locked doors after 6:00 P.M."

1160 What are the reasons that an employee would be asked to work after 6:00 P.M., a meat cutter?

A. To cut meat for the next day and to clean up.

Q. Is this a usual circumstance, this working after 6:00 P.M.?

A. No, I would say it is not, only when they have a heavy day coming up such as the days preceding Thanksgiving and Christmas.

Q. Is it accurate to state that it is relatively rare for a meat cutter to work after 6:00 P.M.?

A. To the limits of my knowledge, yes.

Q. Would the occasion for it be, for example, a special sale which was going to take place which might require greater cutting and preparation for it?

A. Yes.

Q. Would a new store opening be an occasion for working after 6:00 P.M.?

A. I assume that it would.

Q. Would the late arrival of a load of meat which had to be put in the refrigerators require the butcher to work after 6:00 P.M.?

A. Well, that would be an emergency situation. I  
1161 assume that there would be such a situation alright.

Mr. Dunau: No other questions.

*Cross-Examination by Mr. Christensen.*

Q. Mr. Vorbeck, with respect to this last series of questions on overtime, do you know of any instance where a butcher has ever refused to work overtime under these contracts? That is, after 6:00 o'clock, when the market manager has decided, for whatever reason, that he wants them to work?

A. I have no personal knowledge of such an instance.

Q. And butchers do, customarily, work after 6:00 o'clock when the market manager decides, for whatever the reason may be, that he has need for such service, isn't that correct?

A. Yes, that's correct.

1162 Q. Mr. Vorbeck, I do not think that we yet have in the record an accurate description of how the self-service system of selling meat operates, with respect to the

choices the customer has and when the customer completes the sale.

Would you state in general what the self-service system sale of meat is?

A. Yes, the meat cutters cut, trim, and weigh the meat, package it, put a label on it indicating the price and the name of the cut and the weight. Then they place it in a self-service case. From this case the customer selects whatever cut of meat item she wants. She leaves the meat department, where the self-service cases are located, and takes it, with her other purchases, which may be groceries and other meat items, to the check-out lanes, and it is checked out by a checker, who rings up the price; and she then pays for all the items that she selected, including the meat:

Q. Are there instances where after making an initial selection, a customer changes his or her mind and takes her meat back and decides she doesn't have enough money to pay for all she wants to buy?

A. Yes. In fact, I have done that myself, not because of that reason, but—

Q. Just changed your mind?

A. Just changed my mind. The thought occurred to me that my wife had already bought the particular item I had selected.

Q. And the actual sale is not made, is it, until the customer passes through the check-out counter and the checker totals up the meat and groceries, whatever they may be.

Up to that time the customer has the option of returning any item he or she may wish, do they not?

A. Yes, they even return it after they have paid for it. We refund the money at that point.

Q. Now, what union do the checkers belong to in your stores?

A. The vast majority belong to United Retail Workers

Union Independent. There are some who are members of the Retail Clerks International. There is a local at Benton Harbor, one at Kenosha, several locations. 1164 Another one at Racine. And downstate we have another International Local, but most of them are members of the Independent.

Q. Are they male or female?

A. Both. What, the checkers?

Q. The checkers.

A. The checkers are 99 per cent male. Once in-awhile a young lad is on the check-out stand, but very seldom.

Q. I think you misspoke. I understood you to say "male".

A. Female: I am sorry.

Q. Female. None of them are members of the defendant unions here, are they?

A. No, sir.

Q. And they have no jurisdiction over them and nothing to do with the checkers?

A. That is correct.

Q. And no member of the Butchers Union in the self-service market actually completes a sale of meat, does he?

1165 Mr. Dunan: Are you limiting that question to Jewel Tea?

Mr. Christensen: Jewel Tea.

By the Witness:

A. That is correct, from Jewel Tea.

By Mr. Christensen:

Q. Now, if we can back up on these negotiations and take them backwards.

In the 1961 contract negotiations you testified that you signed that contract. Did that contract, like the others have this exception clause written into the copy you signed?



A. You mean the exception as to the validity of the—

Q. Yes.

A. I don't think so. Not in '61. I think we did that by a separate letter.

1166 Q. Well, there has been, ever since the suit was started, either written right on to the document you signed or—

Mr. Dunau: Objection. This is an awful lot of leading, Mr. Christensen.

Mr. Christensen: All right.

Mr. Dunau: You will recall we have a stipulation that each of the agreements entered into from '57 through '61, was subject to the Jewel's reservation on the market operating hours provision.

Mr. Christensen: Yes.

By Mr. Christensen:

Q. You testified a few minutes ago that on the 13th of November, 1961, you distributed to the various employers who were participating in that negotiation your offer, or the offer you proposed to make, with respect to night operations, and health and welfare, as I recall it.

Now, did you distribute it to all of the participating employer representatives?

A. Yes, sir. Everyone who was present on November 13th.

Q. Specifically, did you distribute one to Mr. Bro-mann's organization?

A. Yes, sir.

Q. The offer says that Jewel is making it on behalf of itself and any other employer who desires to join.

Did any other employer offer to join?

A. Not a single—

Q. To your knowledge?

A. No, sir. Never to my knowledge.



Q. Specifically, did the Associated or its agent, Mr. Bromann, offer to join in that offer?

A. He did not.

Q. Now, let me direct your attention to the negotiating meeting of November 2, 1961. You have testified this morning that you asked Kelly to assume that all provisions of a contract has been agreed to save the question of operating hours, and that the industry would tender to him an agreement limiting the sale of fresh meats to three nights a week, on the assumption also that Jewel would drop 1168 this lawsuit. Then you said that Kelly came back and responded to that and said that your assumptions were loaded, and that to negotiate night hours on the limited basis of three nights a week is unrealistic.

Can you tell in some detail what Kelly said in response to your proposal to him a little more than you did? You were pretty brief in your testimony.

A. What proposal do you refer to?

Q. Well, when you asked him to make that assumption, that all conditions of a contract were agreed to and that the industry came in with an offer for three nights of night operations and you asked Mr. Kelly under what conditions the union would be willing to recommend that the hours that fresh meat could be sold might be extended to Mondays, 1169 Thursdays, and Fridays, until 9:00 P.M.?

A. There wasn't a great deal of discussion. The purpose of asking those questions was to find out:

Do you want one journeyman on duty, or did he require a journeyman on duty at all?

1169 Do you want one, two, or more?

Do you want them every night; do you want them to start at 9:00 A.M., or at noon?

We didn't get the answer. We were just trying to find out what set of conditions the industry would have to meet to formulate an offer which would be acceptable to the union.

1170 Q. Well, I understood you to say this morning that Kelly came back and said that to enter into that kind of a contract would be conspiring with a group of employers to limit operations to certain nights and to certain hours, and it would be illegal?

A. He said that.

Q. Was there any further discussion about the legality or illegality of that proposal?

A. No, sir.

Q. Did Mr. Kelly explain how he couldn't touch what he conceived to be that illegality, but was not embarrassed to go ahead and ban all night meat sales, would enter into a contract that would even further limit them?

A. I recall that he made no further explanation.

Q. You have testified this morning that on November 3, 1961, the employers submitted a revised proposal to the union which made certain changes, but made no changes with respect to the restriction on market operating hours?

A. Yes, sir.

Q. Before the employers submitted that proposal, 1171 the employer-representative submitted that proposal, that they conferred with each other?

A. We always do, yes.

Q. Did Mr. Bromann and Associated participate in that caucus or this conference before a decision was arrived at by the group to submit this proposal which was submitted on November 3rd?

A. Yes, sir.

Q. Did you, as the representative of Jewel in this conference or caucus, endeavor to get the other employers to take a stand against removal of the night restriction?

A. I don't know that I did. I think about this time we regarded it as rather hopeless that there would be an agreement on it.

My notes reflect no attempt to persuade any one. They

simply reflect the proposal we put together, which was submitted on behalf of the industry.

Q. Now, did you have any discussion over Mr. Kelly's position that you testified to this morning that any demand for night operations had to come from the entire 1172 industry and must provide for seven hours of operations?

Mr. Daugherty: You mean seven days.

Mr. Christensen: What did I say?

Mr. Daugherty: Seven hours.

By Mr. Christensen:

Q. (Continuing.) —must provide for seven days and nights of operations and that the proposal would have to come from the entire industry?

A. Very little discussion, and I think the consensus was almost an unexpressed consensus, was that he had slammed the door, that he had made it impossible to negotiate further.

1173 Q. You identified a gentleman by the name of Neilubowski. He is one of the defendants in this lawsuit, is he not?

A. Yes, sir.

Q. Have you, on any occasion, heard Mr. Neilubowski discuss what the union's attitude should be with respect to taking a position on night operations, as between big operators and small operators, or anyone else?

A. I did, once.

Q. What did Mr. Neilubowski say, and when and where?

A. Back in 1957, at the contract drafting session. He made the comment—

Mr. Dunau: Just a moment. Do you have an independent recollection of this, without looking at your notes?

The Witness: I was merely trying to identify the exact date. I have an independent recollection, yes.

Mr. Dunau: All right.

1174 The Witness: The date was November 27, 1957.  
We said, "We are going to protect the—"

Mr. Dunau: Just a second. Don't read what you have in your notes.

The Court: You stated you have an independent recollection. State what that is.

The Witness: We were going to protect the independent fellow.

Mr. Christensen: I want to record an objection to counsel's tactics upon asking and inviting the witness to use notes upon a very lengthy conversation, and now objecting when he seeks to be as accurate and use notes on cross-examination.

Mr. Dunau: There is a rather big difference between an adverse examination and another type.

Mr. Christensen: There is no difference in accuracy in ascertaining the truth.

The Court: Is there anything further you have to add?

1175 The Witness: No, nothing. There was just one statement.

By Mr. Christensen:

Q. Now, when Neilubowski made that statement he was acting as a union spokesman, was he not?

A. Yes. He represented two locals.

By Mr. Christensen:

Q. At the contract drafting session?

A. That's right.

1178 By Mr. Christensen:

Q. Mr. Vorbeck, you testified here on November 2, 1962, Pages 773 and 774 of the record, the subject of your testimony was a conversation you had with Mr. Bromann in which you told him that your company was perhaps contemplating a lawsuit and that he and his association might be named as a defendant.

The record as it is typed up reads:

"I asked them if they would withdraw their opposition to night marketing. I stated that if some satisfactory market operating hours provision was not negotiated, that we would feel compelled to litigate this question, 1179 and that as principles on the issues extending the hours of operations, in that they undoubtedly would be named as one of the co-defendants, but I did not know just what co-defendant might be named at that point."

I have never known you to use that bad grammar, and I expect that there is some inaccuracy in the transcription.

Would you repeat again what you told Bromann and what he said to you when you had this conversation with him on or about October 11, 1957?

A. Well, the main thing that I told him, other than that, if we couldn't arrive at a satisfactory provision for operating nights, is that we felt compelled to litigate the legality of the market-operating hours restriction, and that undoubtedly the Associated Food Retailers as one of the principal opponents to the extension of night-operat- 1180 ing hours, would be named as a co-defendant.

There wasn't a great deal of further discussion. Mr. Bromann was really fairly quiet. I don't recall that he said much of anything.

Q. Well, when you told him that his organization was one of the principal opponents of it, did he deny that or discuss that with you?



A. No, he didn't discuss it; didn't deny it.

Q. The testimony as written here, then, apparently is—where it says “principles upon the issue,” this at Page 774, should have said “principal opponents,” and that is apparently the error that has been made?

A. Yes, sir.

Q. Now, Mr. Vorbeck, I am going to ask you some questions about the '57 negotiations, and unless counsel objects, you may refer to your notes to refresh yourself as to times and dates of meetings, supplementing your memory with whatever information you may have.

Can you tell me when the first negotiating meeting 1181 was held in the year 1957?

A. Yes, sir. September 5, 1957.

Q. At the Bismarck Hotel here in Chicago, I believe?

A. Yes. Right.

1182 Q. Was there an employer caucus before you sat down with the union members?

A. Yes, sir.

Q. And who was in attendance at that meeting, to the best of your information—the employer caucus?

A. Quite a long list.

Q. I will ask you to name them, if you have a record of them.

A. Yes, I have a record. I couldn't recollect them without the record.

Mr. Dunau: May I interrupt just to be sure we are talking about the people at the employer caucus and not the—

Mr. Christensen: Employer caucus.

By the Witness:

A. Joseph Port and Robert Cohen of National Tea.  
Verne Carr and Gordon Trunnell of Hillman's.  
Harry Rosenhagen, High-Low.  
Louis Carroll and James Parker for Kroger.



Adolph Ernst for A & P.

Van Ausdale for Piggly-Wiggly.

Al Kepner for Goldblatt's.

1183 Dick Richardson for Wieboldt's.

Tony Racz, R-a-c-z, for Safe Way.

I was present on behalf of the company, Jewel Tea Company, rather.

Ted Meindl for Del Farms.

C. H. Bromann for Associated Food Dealers.

Jim O'Connor for the Fair.

George Kokalis for Sure Save.

And Charles Kissell for IGA.

That's all that I see here.

Q. In that caucus was the subject of night openings discussed?

A. Yes, sir.

Q. And did you take any position with respect to it?

A. I have no position recorded, but I am sure I did, because we have always been in favor of nights.

Q. Did Mr. Bromann take a position with respect to it?

A. He reported on—yes, he did.

Q. And what did he say?

A. He reported that the majority of the people he  
1184 represented were opposed to night openings, either for five nights or for one night.

Q. And he was speaking for the Associated Food Dealers?

A. Yes, sir.

Q. Now, I believe you had a negotiating session on the 11th of September of 1957?

A. Yes, sir.

Q. Did you have a preliminary gathering of the employer representatives on that day before you sat down in open negotiations with Mr. Kelly's group?

A. Yes, sir.

Q. Was Mr. Bromann present?

A. Yes, sir.

Q. Did he take any position on that day with respect to nights of operation?

A. Yes, sir.

Q. What did he say on that subject?

A. He had been instructed to negotiate only the proposals demanded, plus delicatessen products, and no other proposals.

Q. Now, when you say, "the proposals demanded," 1185 he is referring to the proposals advanced by the union?

A. That is correct.

Q. And those proposals did not embrace any lifting of the ban against the night sales of meat, did they?

A. They did not.

Q. Did any of the other employer representatives in that employer caucus take a position or voice their views as to night sales of meat?

A. Yes.

Q. What did the other employers announce their positions were?

A. Well, two of the department stores said they were not interested in night openings, but didn't want to stop anyone else. That is Goldblatt's and I believe, the Fair—yes, Goldblatt's primarily, and the Fair. Wieboldt's expressed an interest in Friday night operations.

Q. Did these employers announce those views to Mr. Kelly, or was this in the employer caucus?

A. This was in the employer caucus only.

Q. And did the employers at any time arrive at any agreement to drop the ban on the night sales of 1186 meat, the employer representatives?

A. To completely drop it? No.

Q. Or to drop it for any nights?

A. At one point during the course of the negotiations, there was one offer in which everyone participated, providing for Friday nights of operations.

Q. That lasted for how long?

A. One session.

Q. Did you have a further negotiating meeting on the 18th of September?

A. Yes, sir.

Q. Did Mr. Bromann participate in that negotiating meeting?

A. Yes, sir.

Q. Did you have an employer caucus in connection with that meeting?

A. Yes, sir.

1187 Q. Please state whether or not you and Bromann had any discussion on the subject of restrictions of marketing hours?

A. We did.

Q. Was this in the caucus or in the open meeting in the presence of the unions?

A. In the open meeting.

Q. Now, will you state what was said on the subject of market operating hours?

A. Well, I asked the question:

Is it the position of your group—and this was directed to Mr. Bromann—that the present contract restricting market operating hours be continued with respect to the balance of the industry? And Mr. Bromann answered, yes.

Q. That conversation took place in the presence of Emmett Kelly, did it not?

A. Yes, sir.

Q. Did you have a further negotiating meeting on the 26th of September?

A. Yes, sir.

Q. Was anything said by Mr. Bromann, as the 1188 representative of the Associated Food Dealers, with respect to this position on the offers then outstanding?

A. Just that there was no change in their position insofar as market operating hours were concerned. He joined the industry on the part of their offer which pertained to an apprentice wage scale.

Q. Did you have a further meeting on the second of October, 1957?

A. Yes, sir.

Q. Did Mr. Bromann participate?

A. Yes, sir.

Q. Was there anything said on the subject of night operations?

Mr. Dunau: Is this at an employer group or with the union?

Mr. Christensen: I will find out. Just let him answer this.

By the Witness:

A. Yes, sir.

1189 Q. Did this conversation take place at an employer caucus, or at an open negotiating session with the union representatives?

A. It seems to have taken place in the presence of the union representatives.

Mr. Dunau: Objection to "seems."

The Court: Sustained.

By Mr. Christensen:

Q. What is your best recollection, judging from evidence available to you in your notes as to where it took place?

A. In the presence of the union.

Q. And what was the conversation on that subject?

A. Mr. Bromann, speaking for the independents, stated that the majority of his people were service operators, that night business comes from other operators, not from the chain customers, that his people were opposed to letting the bars down. That they were reiterating their original offer with one exception, and that they were making only one request and that was to free delicatessens 1190 on operations from the jurisdiction of the union under the self-service contract.

Q. I believe you were testifying about the statement that Mr. Bromann made on night operations at the meeting on October 7th.

Did he say anything as to whether his members were disposed to compromise on that issue?

A. He said that there was no compromise possible.

I would like to clarify the record, though: This was stated in an employee caucus later on that same morning. There were six items he discussed at that point.

Q. His statement that they wouldn't compromise was stated to the employers alone?

A. Yes.

1191 Q. The earlier statement—

A. The earlier statement was made just as I stated.

Q. Did you, in the employer caucus, take the position you wanted night operations?

A. Well, that was our position through 1957, '55, and each of the various years since we have acquired self-service.

The Court: What year was self-service established?

The Witness: It came in in late 1952.

The Court: And by "self-service," you are referring to the meat?

The Witness: Yes.

By Mr. Christensen:

Q. My notes show, Mr. Vorbeck, that in connection with your direct examination as to the meeting which was held on October 22, 1957, in which an offer was made for the industry save for the Jewel that made no provision for night operations, and you read an opinion from your 1192 counsel on the legality of it, you were asked a question in which counsel said, used the words, "Your stores would be open twenty-four hours a day, seven days a week, under your proposal."

Did you at any time, at any of these negotiations, ever state that it was the intention of Jewel to operate its stores twenty-four hours a day, seven days a week?

A. No, sir.

Q. Mr. Vorbeck, skip, if you will, to the meeting of November 12, and I will ask you if during that day Mr. Bromann took any position with respect to night operations?

A. Yes, sir.

1193 By Mr. Christensen:

Q. Did he say what he had to say on that day in the presence of the unions or in an employee caucus?

A. It was in an employer caucus.

Q. What went on in the employer caucus with respect to the subject of night operations on that day?

A. In the employer caucus?

Q. Yes.

A. An offer was put together, calling for one night of operation, Friday night, and it was agreed upon by everybody except the Associated Food Dealers.

Mr. Bromann wasn't present until about noon. He came in about noon and stated that he had been authorized to make an offer, but it contained no nights of operation, and it was our understanding, that is, the rest of the



industry's understanding he was going to take the rest of the industry's offer back to his policy group supposedly meeting on the evening of November 14th or some 1194 time on November 14th.

Q. Now, you say his policy group. You mean the policy-determining group of the Associated Food Dealers?

A. Yes, sir.

Q. Did Bromann ever follow that subject up with you in the following days?

A. Yes, sir, on the very next day.

Q. Which would be the 15th of November?

A. Right.

Q. And what did he say on that day?

A. He would not go along with the industry proposal for any night of operation. This was said out of the presence of the industry.

Mr. Dunau: Out of the presence of the industry?

The Witness: I am sorry. Of the union.

Then—do you want me to continue or—

Mr. Christensen: Well, just a second.

1195 By Mr. Christensen:

Q. On that day, did this employer caucus on the 15th take place in the morning or in the afternoon? When was it that Bromann made this statement?

A. On the morning of the 15th.

Q. Did any other employer change its position with respect to night operations on that date?

A. National Tea announced they were willing to reconsider and join in an earlier proposal we had made to the union in its offices.

Q. And what was that proposal in substance?

A. It called for five nights of operation, Monday through Friday, with the further condition that a journeyman must be on duty on Thursday and Friday nights and

subject to the further condition that the first employee called on other nights must be a journeyman.

It provided a substantial wage increase over the existing scale. It was quite a lengthy proposal. That was the essence.

1196 Q. Did Bromann take any position as to rates of pay or numbers of men that he would insist would have to be on duty if there were any nights of operation?

A. He did during an employer caucus.

Q. What did he say?

A. That one-half of the market personnel be on duty after 6:00 P. M., whenever the market was open after 6:00 P. M.

Q. He wanted what?

A. One-half of the market personnel.

For example, you have six meat cutters; he wanted three on duty.

Q. Well, did he make any statement with respect to how many would have to be on duty if you were open on Friday night?

A. No, his was with respect to any nights.

Q. About what time of day did the employers sit down or meet with the union people?

A. The union came in about 11:30 in the morning. They promptly called a caucus with a small group of union  
1197 representatives and a small group of employer representatives.

Q. And who picked out the employer representatives?

A. I am not sure whether the—I think they rather picked themselves, but I am not sure.

Q. Was Mr. Bromann one of those?

A. Yes, sir.

Q. And was this Ted Meindel one of the fellows who testified for the defendants here, was he also a purported employer representative in that—

A. Yes, sir. .

Q. And you didn't hear what those gentlemen discussed?

A. We were not present at the discussion. All we got back was a report later on as to what they would do.

Q. Did Bromann join in any industry offer on that day at all?

A. I have a conflict in my recollection with my notes, and I have had it at every point in this testimony.  
1198 My recollection is that he did join with the industry for one night of operation some time during this day.

Q. Did he submit a separate offer of his own on that day?

I direct you to Page 2 of your handwritten notes.

A. No, he did not submit that as an offer. That was in discussion with the employer group only.

Q. So that publicly, so far as you know, Bromann with the union consistently opposed night operations?

Mr. Dunau: Objection, your Honor. That is as leading as one could possibly be.

Mr. Christensen: That is correct.

Mr. Dunau: No, it is not correct, because the witness has just testified that on November 15th, Bromann joined with the industry on a proposal for one night of operation on Friday night.

1199 Mr. Christensen: No, he has just testified that was correct.

The Court: Let's clear it up.

Mr. Christensen: That is what I am trying to clear up.

The Witness: I can't agree with you, counsel. He did join at one time, and it was on the 15th.

Mr. Christensen: He did.

By Mr. Christensen:

Q. Then what is it you are referring to on the 15th that he did only to the employer group? I am confused.

A. That gets down to the conditions under which we would agree to nights, and he was discussing the flexible work day and the requirement of somebody being on duty.

This was after the caucus with the—I think it was five men—four men, including—plus Mr. Bromann, and at which they finally came to agreement with the industry on one night of operation.

1200 Q. All right. Now, you have testified that about a week before this you had presented an offer directly to the union on behalf of Jewel at the union office.

A. Yes, sir. Two weeks, actually.

Q. Two weeks, yes.

Did you present that on Friday, November 1st?

A. Right.

Q. And with respect to the subject of night operations what did your offer to the union provide?

Mr. Dunau: The offer is in the record.

There is hardly any purpose in asking the witness what the offer is. The exhibit is in evidence.

Mr. Christensen: All right.

The Court: Question withdrawn?

Mr. Christensen: I will withdraw it. I think counsel is correct.

By Mr. Christensen:

Q. In the joining in the offer of the 15th of November, for one night of operation, did Bromann take any position as to whether the one night of operations would commence in the first or second year of the contract?

1201 A. At the point he joined in, I don't think he did. He had expressed a prior opinion that it should be the second year of the contract.

Q: He expressed that publicly to the union, did he not?

A. I do not know.

1202 *Redirect Examination by Mr. Dunau.*

Q. Mr. Vorbeck, concerning the statement that you testified to that Mr. Neilubowski made on November 27, 1957, on that date, agreement had already been reached previously on the entire subject of negotiations pertaining to the Chicago area, had it not?

A. Yes, sir. Chicago area excluding 189.

Q. Excluding 189, you are quite right. Was the statement made by Mr. Neilubowski made to you?

A. Yes, it was a side conversation between myself, Mr. Neilubowski, and Mr. Louis Carroll of the Kroger Company.

Q. You participated in this conversation?

A. There wasn't much conversation. He just made the statement.

Q. What was the context in which he made the statement?

A. On that particular date we had two things going. First, we did the contract draft in session, and then we followed it immediately with further negotiations with 189.

1203 And I think it had to do with a proposal made by the Kroger Company with respect to 189, with reference to the so-called flexible work day.

In Group 2 of 189, which is the Rockford area, they had a work day which started at 9:00 A. M., and ended at 9:00 P. M. The Kroger proposal, which incidentally was joined in by all the chains, calls for a work day which would provide eight hours of work to the meat cutters but would not necessarily start at 9:00 A. M.

In other words, it would cut down the amount of total

pay for the day's work. You would get either two and a half or three hours of overtime for the hours worked after 6:00, and five and a half or six hours straight. And Alex's comment—

Q. When you say "Alex" you mean Alex Neilubowski?

A. Yes.

(Continuing): —had relationship to this flexible work day. I am not clear on how it got tied in to 189's negotiations. I just remember that he was talking about the service markets and in the service market operation 1204 you have to have a man on duty all day in order to perform. You don't have to do that in the self-service market.

Q. Now, he was talking, as you recall it now, about the flexible work day in Group 2 of Local 189, is that it?

A. Flexible work day has been part of the discussion in the main negotiations as far as that is concerned.

Q. At the time you are talking about now, on November 27th, was this statement made in connection with a discussion of the flexible work day pertaining to Group 2 of Local 189?

A. Not particularly. He was just—it came out that the offer was made and it was made in connection with the offer prepared by the Kroger Company.

1205 Q. And the offer that he was talking about pertained to a flexible work day in Group 2 of Local 189, is that it?

A. In Group 2, and the new Group I-A, yes.

Q. Now, in Group 2 and the new Group 1-A of Local 189, night operation had been permitted, had it not?

A. Not in 1-A, but it had in Group 2.

Q. But in 1-A, as the result of the 1957 negotiations, night operation was permitted, is that correct?

A. It subsequently developed, yes.

Q. All right. So that this statement was made in con-



nection with Group 2 and Group 1-A in which night operation was permitted, is that it?

A. Well, in which we were seeking to get night operations, yes.

Q. You already had it in Group 2?

A. Right.

Q. And obtained it in Group 1-A?

A. Yes. And we had sought it in Chicago, too, if we could get it.

1206 Q. We are talking about a conversation on November 27th, a statement made by Mr. Neilubowski.

Now, with respect to that statement of November 27th, it was made in a context of a discussion of Group 2 and Group 1-A of Local 189?

A. Not completely.

Q. Well, you put the time.

A. In the first place, Mr. Neilubowski, as I recall it, didn't stay for all the 189 negotiations. This was the tail-end of the contract. This was an explanation of why they felt they had to have the same conditions in, I assume, service and self-service. He didn't elaborate. It was just a short comment in response to this offer which had just been outlined.

Q. The offer pertaining to Group 2 and Group 1-A of Local 189?

A. Yes, sir.

Q. And in Group 2 of 189, you always had night operations, is that correct?

A. In my personal recollection, yes.

Q. In Group 1-A you obtained night operations in 1207 1957, is that correct?

A. Yes, sir.

Q. All right. Now, Mr. Vorbeck, would you look at the report of October 23, 1957, which you made to Mr. Hargrave?

A. I have it.

Q. All right. Now, look at the concluding paragraph on Page 3. Is that a statement to Mr. Hargrave of what you told Mr. Kelly at the meeting of October 22nd?

A. Yes, sir.

Q. All right. Now, look at the last part of the paragraph on Page 4. Did you report to Mr. Hargrave that you had said this to Mr. Kelly:

"We would much prefer to negotiate for one or more nights of operations and would abide by the results of such negotiations if they were satisfactory to us. But if they were not, we felt impelled to litigate the matter even though our successful outcome of such litigation would inevitably mean that the market operations would automatically be opened to seven days a week, twenty-four hours per day, of operation."

A. I made that statement to Mr. Kelly.

Q. All right.

1212

Wednesday, November 28, 1962,  
2:00 o'clock, P.M.

Court convened pursuant to recess.

1213 R. EMMETT KELLY, recalled as a witness, having been previously duly sworn, deposeth and saith further as follows:

*Direct Examination by Mr. Dunau.*

Q. Mr. Kelly, are the defendant local unions in this case separate autonomous unions?

A. Yes, they are.

Q. As a member of the bargaining—in what year were

joint negotiations between unions as a group and employers as a group first begun?

A. Approximately 1941.

Q. Now, before 1941 what was the method of bargaining which prevailed?

1214 A. Before 1941, Local 546, which was the largest of the seven local unions, did the bargaining and, in the end, whatever resulted from the Local 546 bargaining was generally passed on to the other locals, which were smaller locals.

By Mr. Dunau:

Q. Now, with what group did Local 546 bargain?

A. At what particular stage?

1215 Q. Before 1941?

A. Before 1941 we bargained with an independent group known as the Retail Dealers Association. Another independent group known as the Northwest Polish Meat Dealers Association. One known as the Southwest Meat Dealers Association, and at one phase of our negotiations in the Thirties and before 1940, there was another group known as the Cook County Grocers Association, and with any of the chain stores that may have been in existence at that time.

Q. Did you bargain with these employers as a group?

A. Not necessarily as a group, no.

1216 Q. Was joint negotiations instituted in 1941, in order to strengthen the bargaining position of the defendant local unions?

Mr. Christensen: I will object to that.

The Court: . Overruled.

By the Witness:

A. Yes, it was.

By Mr. Dunau:

Q. Would you explain in what way it was designed to strengthen the bargaining positions of the local 1217 unions?

A. Well, actually some of the smaller local unions had fallen behind, in wages for example, in other conditions of employment. In order to bring them up to the same level it was decided that bargaining as a group would be the best way to do it.

Q. Beginning with what year were the materials of the collective bargaining agreements covering meat markets in the Chicago area identical?

A. Well, this, I believe, dates beyond my time with the organization. All of the contracts in the City of Chicago, were of identical nature as far back as I can remember, and I can remember back as far as 1931.

1218 By Mr. Dunau:

Q. And was that uniformly the consequence of the other local unions following the local 546 lead?

A. Yes, it was.

Q. Now, beginning with what year to your knowledge did the collective bargaining agreements contain a provision pertaining to market operating hours?

A. To my knowledge, ever since I have been with the Amalgamated Meat Cutters in 1931.

Q. About how many representatives are on the negotiating committee of the defendant local unions when they participate in bargaining with the employer group?

A. That total will range anywhere from 17 to approximately 23.

Q. In the years preceding 1957, during negotiations between the union group and the employer group, was there

a time that Mr. Charles Bromann acted as the chairman of the employer group?

A. Yes, sir, there was.

Q. Do you recall when that was?

A. It was in the '50s, I am quite positive.

1219 Q. Did he act as the chairman of the employer group for the entire period of the negotiations?

A. Yes, he did in one particular year.

Mr. Dunau: Would you mark this Defendant Unions' Exhibit 40 and then each succeeding agreement 40-A, 40-B, etc.

(Said documents were marked Defendant Union Exhibits 40 and 40-A through 40-Q, both inclusive, for identification.)

By Mr. Dunau:

Q. Mr. Kelly, did you have a search of the files of Local 546 made in order to uncover each of the agreements entered into by Local 546 since 1941, each of the standard agreements?

A. Since 1941?

Q. I am sorry. Since 1919?

A. Yes, we did.

Q. I show you the agreement for 1920, identified as Defendant Unions' Exhibit 40, and ask you whether that was the agreement which you found for that year?

1220 A. Yes, this is.

Q. Did you find an agreement for 1919?

A. No, sir, we did not.

Q. I show you the agreement for the year 1937 to 1938, identified as Defendant Unions' Exhibit 40-A, and ask you whether that was the agreement found for that year?

1222 The Court: Well, the objection is overruled. They are received.

(Whereupon the documents marked DEFENDANT UNIONS' EXHIBITS 40 and 40-A through 40-Q, were received in evidence.)

1223 Mr. Dunau: Then for the record I should say that the agreements which have been received in evidence are Defendant Unions' Exhibit 40 through 40-Q.

Perhaps, Mr. Christensen, we can stipulate as to this: That for the interval between September 30, 1950 through October 1, 1951, the agreement that was to expire on September 30, 1950 was automatically renewed for one year.

Mr. Christensen: That is all right.

Mr. Dunau (Continuing): That the agreement which was to expire on October 2, 1954 had a wage reopener clause effective on October 2, 1953, that the agreement was open in 1953 for wages only and otherwise all its terms remained in effect through 1954.

Mr. Christensen: That is a fact. If you state that is the fact.

Mr. Dunau: That is the fact as I have been able to ascertain it.

1224 Mr. Christensen: I will stipulate to it.

Mr. Dunau: And my reason for putting it in evidence is to simply fill out the entire chronology.

Mr. Christensen: I understand.

Mr. Dunau: And the fact, as I have been able to ascertain it, is that the agreement that was due to expire on October 2, 1954, was carried over by automatic renewal for one year, to October 2, 1955, and that the agreement that was due to expire on October 6, 1956, was carried over for one year by automatic renewal until October 6, 1957.

Mr. Christensen: We will stipulate to those facts, subject to the same objection I previously voiced.

By Mr. Dunau:

Q. Mr. Kelly, it is in evidence as a result of the testimony of Mr. Lunding that Jewel Tea began operating



meat departments in the Chicago area in either 1225 1933 or '34.

Did the local unions have collective bargaining agreements with Jewel Tea covering Jewel's meat department operations from the time that Jewel began operating meat departments in the Chicago area?

A. I, personally, negotiated contracts with Mr. Frank Lunding in 1936, and it is my knowledge that they did have union contracts at the time of their opening shops in Chicago.

1226 Q. Mr. Kelly, did each of the agreements that Jewel Tea entered into from the first agreement it entered into contain a provision governing market-operating hours in its meat departments?

A. Yes, they did.

Q. Was it the same provision which was in the agreements with all other employers in the Chicago area?

A. It was identical.

1227 Q. In the Chicago area does the work of a butcher in a self-service meat department include replenishing the stock in the retail counters?

A. It certainly does.

Q. Does the work of a meat cutter in a self-service meat department include rearranging the meat in the counters?

A. Yes, it does.

Q. Does the work of a meat cutter in a self-service meat department include cleaning the cases?

A. Yes, it does.

Q. It is in evidence, Mr. Kelly, that in 1957, IGA Table-Right, through Mr. Charles Kissell, participated in the negotiations.

What is IGA Table-Right?

A. IGA is more properly known as the Independent

Grocers Association, and is an independent cooperative buying group that services a group of stores.

1228 Table-Right is their meat merchandising method.

1229 Q. And who is Charles Kissell?

A. Charles Kissell, during 1957, was the meat superintendent or meat supervisor for IGA.

Q. Do you know how many stores Mr. Kissell represented in 1957?

A. Yes, sir.

Q. How many?

A. Approximately 60.

Q. Were the meat departments in these stores service or self-service?

A. In the main, they were service.

1230 Q. Mr. Kelly, I show you what has been marked Defendant Unions' Exhibit 41 for identification, entitled, "Proposal Made To The Union On November 12, 1957."

I ask you whether this document was given to the union group on November 12, 1957, as an employer proposal, excluding Associated Food Dealers?

A. Yes, it was.

Q. Are the notations on this document all in your own handwriting?

A. Yes, they are.

Q. Look at the notation in the upper left-hand corner. Would you explain to me—would you read that, and tell me what that is?

A. Well, I had made a personal notation to inform myself of the next scheduled meeting. I have said here:

"Next meeting of industry November 15th, union at 11:00 o'clock. In office at 9:30. Glen Fleischman."

1231 I believe he had something to do with—

Q. Was he an arbitrator?

A. I believe he was.

1232 Q. You will notice that "Jewel Tea Company, Incorporated" is crossed out and substituted is "Associated Food Dealers who will take back and report."

A. Yes, sir.

Q. What does that mean?

A. We were instructed by the employers group to strike, as we did, and to insert as we did.

Q. Now, in the right-hand margin is the statement "Offer covers:" and then an enumeration of the employers.

Were you told by the employer group that this proposal covered these employers?

A. Yes, we were.

Q. Now, there also is a notation of wage rates in your handwriting.

Were these the wage rates you were told by the employer group to put into the proposal?

A. Yes, they are.

Q. And also on the first page there are—there is material which is crossed out.

Were you told by the employer group to cross 1233 that out?

A. Yes, we were.

Q. Now, on Page 2 of the proposal, opposite "5," there is the notation "\$1 per day." Will you tell us what that is?

A. Well, this is the premium rate of pay that would apply to the fifth day of work in a holiday week or the sixth day of work in a regular week.

It was based on the rate of \$1 per day.

Q. Was that based on what the employer group had proposed?

A. Yes, sir.

Q. Now, the last page of the proposal opposite "13,

Article 2," there appears in your handwriting after "ham slices," "plus picnics."

Were you asked to insert that by the employer group?

A. Yes, we were.

Mr. Dunau: I offer Defendant Unions' Exhibit 41 into evidence.

1234 The Court: It is admitted.

(Said document, so offered and received in evidence, was marked DEFENDANT UNIONS' EXHIBIT NO. 41.)

Mr. Dunau: Would you mark this as Defendant Unions' Exhibit 42, please?

(Said document was marked Defendant Unions' Exhibit 42, for identification.)

By Mr. Dunau:

Q. Mr. Kelly, I show you what has been marked Defendant Unions' Exhibit 42, a proposal made by the union on December 15, 1957.

1235 .Is that the proposal which was given to you by the employer group at the meeting on November 15, 1957?

A. Yes, it was.

Q. Are the handwritten notations on that proposal in your writing?

A. Yes, they are.

Q. Does the notation on the upper left-hand margin "Bismarck, November 15, 1957," identify the place and time of the meeting?

A. Yes, it does.

1236 Q. There are some numerals on the upper right-hand side of Page 1 of Defendant Unions' Exhibit 42. Would you please state what these numerals are?

A. This was an approximate tabulation of my own making for my own benefit of the amount of membership contained within these six local unions that are listed.

Q. Now, you will notice that November 12 is crossed out and 15 is substituted. Were you asked by the employer group to make that substitution?

A. Yes, sir, we were.

Q. You will notice that "Excluding Associated Food Dealers, Inc.," was crossed out. Were you asked by the employer group to cross that out?

A. Yes, we were.

Q. Was this a proposal made on behalf of the entire employer group, including Associated Food Dealers?

A. Yes, it was.

Q. You will notice opposite 2, December 2, 1957, is crossed out and substituted in its place is October 1237 6, 1958.

Were you asked by the employer group to make that substitution?

A. Yes, we were.

Q. Did that mean that the proposal for night operations listed opposite 2 was to come in effect the second year of the contract term?

A. That is correct.

Q. Were the wage rates on Page 1 which are in your writing wage rates which you were told by the employer group to insert on this proposal?

A. Yes, we were.

Q. Do you recall what the meaning of the numbers 8 and 4 above "effective date" means?

A. Yes, for a full day and for a half day. 8 and 4.  
Mr. Christensen: What?

Mr. Dunau: For a full day and a half day.

The Witness: I think that's—I can only remember that we talked in terms of eight hours and four hours, 1238 and to me that is about the only thing those two numbers could mean.

Mr. Christensen: Now, could I interrupt?

Mr. Dunau: Sure.

The Witness: I don't recollect what that is.

Mr. Christensen: The 8 and the 4.

By Mr. Dunau:

Q. Now, at the bottom of the page, you have a notation after a marking which includes part time wrappers, in parentheses "Employers state will not stand in way of settlement."

Did the employer group ask you to insert that?

A. Yes, they did.

Q. And what did that mean?

A. Well, they had up to this point wanted part 1239 time wrappers, and they made it apparent in this particular offer that this would not be in issue and would not stand in the way of a settlement if we saw fit to object to it.

Q. Now, on Page 2, the proposal, opposite 5, "Present amount of premium" is crossed out, and "At 25 cents per hour premium" is substituted.

Were you asked by the employer group to insert that?

A. Yes, we were.

Q. Now, under 6(a)1, Tuesday, Wednesday, Thursday, "and" is crossed out, and substituted in its place is the word "through."

Were you asked by the employer group to insert that?

A. Yes, we were.

Q. Under 6(a)2, there is the notation, "Effective October 6, 1958."

Were you asked to insert that?

A. Yes, we were.

Q. On the rest of that page where there are insertions and cross-outs, were you asked by the employer group to make the insertions and the cross-outs?

A. Yes, we were.



Q. On Page 3 of the proposal, there are likewise insertions and cross-outs.

Were you asked by the employer group to make those insertions and cross-outs?

A. Yes, we were.

Mr. Dunau: I offer into evidence Defendant Unions' Exhibit 42.

Mr. Christensen: No objection.

The Court: Admitted.

(Said document, so offered and received in evidence, was marked DEFENDANT UNIONS' EXHIBIT 42.)

By Mr. Dunau:

Q. On November 15th, Mr. Kelly, prior to submission of what has been introduced as Defendant Unions' Exhibit 42, the proposal made by the entire employer group on November 15th, did you have a meeting with a 1241 group of employers, including Charles Bromann?

A. Yes, sir, we did.

Q. Who was present on behalf of the defendant local unions?

A. Myself, Mr. Alex Neilubrowski, Mr. Frank Flax, one or two others, I cannot recollect who they were, but those I do remember.

Q. Who was present of the employer group?

A. Mr. Carl Bromann, Mr. George Cokalis, Mr. Gordon Ship, Mr. Charles Kissell, Mr. T. J. Meindel, that I can recollect.

Q. Who is Mr. Ship?

A. Mr. Gordon Ship is the owner of Mayflower Foods in Chicago.

Q. Would you please tell us what took place at this meeting of this employer group and union group?

1243 Q. Would you please describe what took place at this meeting between this employer group and union group?

A. This was a group that we were told by this group that had the permission of the entire employer group to meet with us to talk about the operation of meat departments at night. We discussed it in the caucus meeting in another room within the Bismarck Hotel, other than the meeting room we were in on that particular date.

Q. What was the discussion—

Mr. Christensen: Now, I must again object to this. This man is endeavoring by the declaration of an alleged agent to create authority for them to say they had authority. He is reciting declarations which he said were made by some of these people to make this conversation binding on us, and you cannot prove agency that way.

Mr. Dunau: He is describing a conversation. He is not trying to prove any agency.

1244 Mr. Christensen: What he has described makes the balance of this incompetent as against the Jewel Tea Company.

The Court: Overruled.

By Mr. Dunau:

Q. What was the discussion that was had with respect to market operating hours after 6:00 P.M.?

A. Well, at this meeting these people were attempting to prevail upon the union to accept some type of night operation, and they were advancing their own particular reasons for such a want.

Q. Did Mr. Bromann ask the unions to agree to night operations?

A. Yes, he did.

Q. What was the response of the union with reference to these proposals of the employer group for night operations?

A. We told them that we would take it back to the full committee and give them a report later in the day.

Q. And as I understand it, it was following this meeting that the proposal of the entire employer group, 1245 in evidence as Defendant Unions' Exhibit 42, which I show you, was offered to the union group?

A. That is correct, sir.

Q. I show you what has been received in evidence as Defendant Unions' Exhibit 21 and Defendant Unions' Exhibit 21-A, 21 being a letter to you from Mr. Vorbeck dated November 22nd, and 21-A being an offer made on behalf of Jewel Tea on November 22, 1957.

Were these papers given to you by Mr. Vorbeck in your office at about 12:45 P. M. on November 22nd?

A. Yes, they were.

Q. Did Mr. Vorbeck ask you to submit this proposal of the Jewel Tea to the membership at the ratification meeting?

A. Yes, he did.

Q. Did you agree to submit this proposal of Jewel Tea Company to the membership at the ratification meeting?

A. Yes; I did.

Q. Did you receive a phone call from Mr. Vorbeck at 9:30 A. M., about, November 23, 1957?

1246 A. Yes, I did.

Q. Would you please tell us what that conversation was?

A. Mr. Vorbeck phoned me in the union office on that particular morning—it was a Saturday morning—a day prior to the special contract meeting, and made a request that if the proposition he had submitted the previous day was rejected by our membership, would we in its place submit a second proposition. I believe it had to do with female help only.

1247 Q. Would you describe, particularly, what the

second proposition was that Mr. Vorbeck wanted you to submit to the membership?

A. Well, I think what he wanted in the second instance was to submit the same proposition as he had brought to my attention by letter the previous date, only dropping the request for night operation and inserting in its place female operation—female help.

Q. Then, to be entirely precise about this, this alternative he wished you to submit to the membership which he asked you to submit on November 23, 1957, was one in which night operations would be dropped from Jewel Tea's proposal?

A. This is correct.

Q. Now, on Saturday morning November 23rd, the same day still, at 10:30 A.M., did you have a meeting with a Mr. Stapleton and a Mr. Cohen?

A. Yes, sir, I did.

Q. Who is Mr. Stapleton?

A. Mr. Stapleton presently is the president of the National Tea Company.

1248 Q. At that time what was his job?

A. Mr. Stapleton at that time was branch manager for the National Tea Company.

Q. And who was Mr. Cohen?

A. Mr. Cohen at that time was director of Labor Relations for the National Tea Company.

Q. Where was this meeting held?

A. It was held in the offices of our attorney, Mr. Lester Ascher.

Q. Was he present at the meeting?

A. I believe he was.

Q. Would you please state what took place at this meeting?

A. Well, National Tea—

Mr. Christensen: Same objection to this. I don't see that this has any bearing upon this lawsuit.

The Court: Overruled.

Mr. Christensen: This is conversation that these gentlemen had, of the National Tea Company.

1249 By the Witness:

A. National Tea made the same request for night operations that Jewel had previously made, except they were making it orally, of course.

By Mr. Dunau:

Q. Did they state that they were going to go along with the proposal that Jewel Tea had asked you to submit to the membership?

A. The first proposal.

Q. Which included night operation, plus female help?

A. This is correct.

Q. They did not ask you to submit a proposal which deleted night operation?

A. No, sir, they did not.

Q. Did they make any statement pertaining to a legal action against the union?

A. Yes, they indicated they would join Jewel in litigation.

Q. Was a meeting of the membership held of Local 546, held on November 24th, to ratify the contract which had been reached?

A. Yes, it was.

1250 Q. Was this a Sunday?

A. Yes, it was.

Q. About how many members were present at this meeting?

A. Upwards of 3000; sir.

Q. In preparation for such a meeting, do you prepare

an outline of the proposals and counter-proposals which have been made in the course of negotiations?

A. Yes, I do.

1251 Q. On the basis of this outline do you then review with the membership the proposals and the counter-proposals that have been made in the course of the negotiations?

A. In their entirety.

Q. Did you do that at this meeting?

A. I did.

Q. Did you tell the membership of the three issues that they were to vote on?

A. Yes, sir.

Q. What were they?

A. One was the all-industry offer. That we considered to embrace an 85 per cent majority of our employers. And the other was the Jewel offer that had to do with night operation and female help, and in which National Tea had joined. And the third was the offer that they had made based on female help only.

Q. Were these three proposals put to a vote of the members?

A. Yes, sir, they were.

Q. Was the all-industry proposal accepted by the  
1252 members?

A. It was.

Q. Was the joint Jewel-National Tea proposal rejected by the members?

A. Yes, it was.

Q. Was the alternate Jewel proposal rejected by the members?

A. Yes, it was.

Q. Did you then conduct a secret strike ballot among the members to secure authorization for a strike against National Tea and Jewel Tea, if that were necessary?



A. Yes, we did.

Q. Do you recall the outcome of the vote?

A. Roughly, there was some 2200 in favor of a strike, with approximately 100 opposed.

Q. Now, you told us that there were upwards of 3000 at the meeting, and the vote comes to approximately 2300. Would you explain the difference?

A. Yes, as is historical in our meetings, as quickly as the meeting itself is finished, a certain percentage of the membership that might have been within the meeting 1253 hall, have reasons for leaving hurriedly. Only those who remain cast their ballots.

—Mr. Christensen: I thought this vote took place at the meeting?

By Mr. Dunau:

Q. Would you explain that, please?

A. It did take place at the meeting, sir.

Q. Did some of the members start walking out of the meeting at the conclusion of the vote on the three contract proposals which had been submitted to them?

A. Yes, sir, they did.

Q. Now, were there ratification meetings held on that day by all other of the defendant local unions except Local 189?

A. Yes, there were.

Q. Did you submit to the representatives of those other local unions the outline of the proposals and counter-proposals which you had used in your meeting at Local 546?

A. I had done that earlier, yes, sir.

Q. Is the Local 546 meeting held earlier in the day than the other ratification meetings of the other local unions?

A. Yes, sir, it is.

Q. Is that customarily held that way?

A. It is always held that way.

1255 Q. Would you please state the reason for that?

A. Well, the other local unions want to be in a position of guidance, I presume, from what the members of the Local 546 does, 546 being the larger of all the unions.

There is a telephone contact made between all the meetings and the 546 meeting. They start approximately one-half hour later than we do. They are kept apprised of our meeting. They make the same recommendations that we make in our meeting.

Q. Was there such telephone communication on November 24th?

A. Yes, sir.

Q. Did the representatives of the other local unions report to you the vote of their meetings?

A. Yes, that afternoon back in the union office they reported by telephone.

1256 Q. On November 24, 1957, after the meeting of Local 546 was concluded, did you telephone Mr. Vorbeck?

A. Yes, I did, sir.

Q. Did you telephone him in accordance with a request made by Mr. Vorbeck on November 23rd?

A. I did, sir.

Q. Did he ask you, on November 23rd, to telephone him what the outcome of the ratification meeting was?

A. He did.

Q. Did you report to him what the outcome of the ratification meeting was?

A. I did.

1257 Q. Did you report to him the outcome of the meetings of Local 546 and the other defendant local unions?

A. To the best of my ability if they were concluded, yes.

Q. What did you report to him with respect to the outcome of the meetings of the other local unions?

A. That they, too, had ratified the same contract that 546 had ratified.

Q. I show you what has been marked Defendant Unions' Exhibit 43 for identification, entitled

"Amalgamated Meat Cutters and Butcher Workers 1258 of North America, Local 546, Special Contract Meeting, Sunday, November 24, 1957,"

and ask you whether that is a copy of the minutes of the meeting of Local 546 on that day?

A. Yes, sir, it is.

Mr. Dunau: I offer that in evidence.

Mr. Christensen: May I just take a second, your Honor?

The Court: Very well.

Mr. Christensen: I will object to this. These sheets purport to be the minutes kept by this union of a meeting, and I don't think they are any more admissible than was the report that Mr. Vorbeck made to Mr. Hargrave, which counsel objected to this morning.

Counsel has examined the witness as to what went on at the meeting. I examined him some weeks ago. But the minutes themselves offered by the union are mere 1259 self-serving documents of their own records, and I believe inadmissible.

Mr. Dunau: The minutes, your Honor are competent to show what transpired at a meeting. They are relative in this case to show that all that has happened in the course of this entire controversy is conventional union activity.

Mr. Christensen: Whatever your purpose may be they are not competent. They are mere self-serving minutes

that were made up. No more than you would let me put in Mr. Vorbeck's report to Mr. Hargrave can you put in Mr. Kelly's report to the secretary of his own meeting.

The Court: I think the objection is well founded. Sustained.

Mr. Dunau: May I make this exhibit part of the record as an offer of proof, your Honor?

The Court: You may..

Mr. Dunau: As I understand it then, this exhibit 1260 will be included in the record as an offer of proof.

The Court: It may.

By Mr. Dunau:

Q. Mr. Kelly, are contract ratification meetings among the members of the defendant local unions customarily conducted to determine whether the terms of settlement recommended by the negotiating committee are acceptable to the members?

A. Yes, they are.

Q. Are these meetings customarily held on Sunday?

A. Yes, they are.

Q. Why are they held on Sunday?

A. Sunday affords a better opportunity for our meat cutter members to attend a meeting, because it is the only day off during the week. That is the only day on which they are all off. You get a better turn-out.

1261 Q. Now, prior to the inception of negotiations do the local unions seek to ascertain the wishes of the members on the question of contract terms to be negotiated?

A. Yes, we do.

Q. By what means do the local unions seek to ascertain the wishes of the membership?

A. Well, many, many weeks prior to the opening of the contract negotiations we will hold group local union meetings of the official staffs, at which time we will prepare

surveys, ask these fellows as they go in and out of the markets—and they go in and out often—to ascertain the wishes and desires of the meat cutters that we represent.

Q. Now, after these business agents made this survey, what is then done?

A. We then call a joint meeting of all of the local unions involved, and prior to that we have asked each local union to write out their immediate demands from their own immediate locality and bring these in to 1262 the union office for a group meeting.

From those seven local unions and the seven different types of demands, we boil it down to one final set of contract proposals.

Q. Are these then the contract proposals that are submitted to the employers?

A. Yes, they are.

Q. During the course of the negotiations, do the local unions seek to ascertain the wishes of the members?

A. Yes, of course.

Q. By what means?

A. Well, again, on a daily basis as they travel in and out of the shop and in our regular union meetings.

Q. When you say "they," who are you referring to?

A. The business representatives from the various local unions.

Q. Now, after you had this telephone conversation with Mr. Vorbeck on November 24, 1957, when you informed him of the outcome of the contract ratification meetings, did you thereafter have a telephone conversation with 1263 Mr. Bob Cone of National Tea?

A. Yes, sir, I did.

Q. Do you recall when that conversation was?

A. I believe it was about mid-week after the Sunday meeting.

Q. Will you state what was said in that conversation?

A. Well, the gist of the conversation was to the effect that they were going to accept the contract that everybody else had accepted, that actually they would not litigate, but they were prepared to take a strike.

Q. Now, at the conclusion of the 1959 negotiations, was a contract ratification meeting held at Local 546 on Sunday, December 14, 1959?

A. Yes, there was.

Q. On that day did you conduct a ratification meeting in the same way as the one in 1957?

A. Yes; we did.

Q. Did you review with the membership the proposals?

1264 A. Every one.

Q. Did you submit to the membership the agreement which had been reached with the employer group?

A. Yes, we did.

Q. Did the membership vote to accept the agreement which had been reached.

A. They did.

Q. Did the other local unions conduct ratification meetings at that time?

A. They did.

Q. Was there the same communication between the other local unions and Local 546 in 1959, as in 1957?

1265 A. Yes, there were.

1267 Q. I show you what has been marked Defendant Unions' Exhibit 44 for identification, entitled Amalgamated Meat Cutters and Butcher Workers of North America, Local 546, Special Contract Meeting, Sunday, December 13, 1959, and ask you whether that is a copy of the minutes of the meeting of Local 546 on that date?

A. Yes, it is.



Mr. Dunau: I offer that in evidence.

Mr. Christensen: Same objection as to the other minutes. I will have no objection if you wish it to stand as an offer of proof.

The Court: It may stand as an offer of proof. The objection is sustained as to the exhibit.

By Mr. Dunau:

Q. There was a meeting held of the employer group and of the union group, Mr. Kelly, on September 29, 1961.  
1268 At that meeting, did you ask the employer group to make a breakdown of its contract demands?

A. Yes, we did.

Q. What did you ask them?

A. Well, we had been in a series of meetings prior to that where we had made no progress, and in that meeting we asked them to give us something definite to work from.

We wanted to know what type of night operation they wanted; we wanted to know what about the female help; we wanted to know about ratios for female help; we wanted to know the price they would pay for night operation; we wanted to know about health and welfare, and various other things.

Q. Now, was a contract ratification meeting of Local 546 held on Sunday, November 26, 1961?

A. Yes, sir, it was.

Q. About how many members attended?

A. Upwards of three thousand, sir.

Q. At the 1959 meeting, about how many members attended?

1269 A. Approximately the same.

Q. Did you at this meeting review for the members the proposals and counter-proposals which had been made in the course of the 1961 negotiations?

A. Yes, I did.

Q. Did you inform the membership of the issues that they were to vote on, on that day?

A. Yes, I did.

Q. Would you please state what you told the members as to the issues they were to vote on?

A. We had three propositions that they would vote on, on that particular day. Two of the propositions had come from the Jewel. One had come from a majority of industry.

The first proposition from Jewel was a proposition that had to do with night operation on a 7-day, 24-hour per week basis.

The second proposition from Jewel had to do with the proposition that called for night operation on Mondays, Thursdays and Fridays.

And the third was the industry proposal.

1270 Q. Now, the first Jewel proposal, did that provide for night operation without employees on duty?

A. Yes, sir, it did.

By Mr. Dunau:

Q. Mr. Kelly, I show you Plaintiff's Exhibit 10, which is Jewel's 1961 proposal. On it, Jewel Offer No. 1 is stated, and then on the second page, Jewel Offer No. 2.

1271 Did you identify for the members Jewel Offer No. 1, and Jewel Offer No. 2, as stated on Plaintiff's Exhibit 10?

Mr. Christensen: I will object to that question simply for this reason, Mr. Dunau. I do not understand what you mean, did you identify for the members.

By Mr. Dunau:

Q. Did you explain to the members that these were the proposals made by Jewel Tea?

Mr. Christensen: Why don't you ask him to tell what he

did. I haven't objected to leading. We are trying to shorten this up, but I do object to a question in that form.

By the Witness:

A. In the contract agenda that I prepare for each of the special ratification meetings I write into it any letters that may have been received in the nature of offers.

In this particular meeting, I had written in ver-  
1272 batim the propositions extended by Jewel Tea to the union. These were read in their entirety to the membership in the meeting.

1273 Q. Did you put Jewel offer No. 1, as identified on Plaintiff's Exhibit 10, to the membership for a vote?

A. I did, sir.

Q. What was the result?

A. It was rejected.

Q. Did you put Jewel offer No. 2, as identified on Plaintiff's Exhibit 10, to the membership for a vote?

A. I did, sir.

Q. What was the result?

A. It was likewise rejected.

Q. Did you put to the membership the proposal which the employer group had agreed to?

A. Yes, I did.

Q. What was the result?

A. It was accepted.

Q. Did the other local unions conduct ratification meetings on November 26, 1961?

A. Yes, they did, sir.

Q. Was the same sort of communication between Local  
546 and the other local unions carried on in 1961 as  
1274 in 1957?

A. It was.

Q. I show you what has been marked as Defendant Union's Exhibit 45, entitled, "Amalgamated Meat Cutters

and Butcher Workmen of North America, Local 546, special contract meeting on November 26, 1961", and ask you whether that is a copy of the minutes of the meeting held on that date?

A. It is, sir.

Mr. Dunau: I offer it in evidence.

Mr. Christensen: We take the same position as to the others.

The Court: The objection is sustained, but it may stand as an offer of proof.

1275 By Mr. Dunau:

Q. In 1961, after the conclusion of the negotiations, did you ask Mr. Charles Bromann to give you a list of his members that had authorized him to sign the agreement of 1961 on their behalf?

A. Yes, sir, I did.

Q. Did he give you such a list?

A. He did.

Q. How many names of employers were on that list?

A. 313 names on that list, sir.

Mr. Christensen: This is in '61?

Mr. Dunau: '61.

By Mr. Dunau:

Q. Was it important at that time to ascertain the number of employers that had authorized Mr. Bromann to sign an agreement on their behalf?

A. Yes, it was.

Q. Why?

A. Well, because in this particular contract we had gone into health and welfare for the first time, and in order for these employers to be properly covered  
1276 under the terms of our health and welfare it was required that we have signed copies of contracts from them. If Mr. Bromann was negotiating on their behalf

they gave him an authorization to that extent, and we accepted Mr. Bromann's total of 313 names as being properly authorized and signed for.

Q. Did the 1955-'56 agreement covering meat department operation in the Chicago area for the first time permit sale of frozen fresh poultry, cut up or whole, from self-service cases after 6:00 P.M.?

A. Yes, sir, it did.

Q. Would you please state the reason for that agreement at that time?

A. We had had a tremendous demand from the employer group for the right to sell poultry, frozen poultry, after the closing hour of 6:00 P.M., seeing at the time that they were in direct competition with papa and mama stores and delicatessen stores, where these items could be purchased; and in fairness to the employers who were employing meat cutters that we represent, we felt that they had the same privilege, should have the same privilege, and we 1277 agreed to give them that right.

Q. Did the 1957-'59 agreement for the first time permit the sale of fresh poultry, cut up or whole, processed on the premises from the self-service cases after 6:00 P.M.?

A. Yes, sir, it did.

Q. What was the reason for that agreement?

A. Well, the sale of frozen poultry had made such inroads into the market, and particularly from 6:00 to 9:00, that sale of fresh poultry, of course, would be done by the members that we represent, was slowly but surely dying on the vine. In order to keep that work, that of course is what we are interested in, we gave them the right to sell fresh cut up poultry that was processed on the premises at night as well.

1278 Q. Do the agreements provide that at the employers' discretion overtime and overtime rates may be worked after eight hours in any one day and behind locked doors after 6:00 P.M.?

A. Yes, sir.

Q. What is the occasion for working behind locked doors after 6:00 P.M.?

A. Well, there is a variety of reasons actually. There are some independent stores that have order trade, where orders must go out early in the morning, say 7:00 o'clock, 8:00 o'clock in the morning, and they require that the meat be cut the night prior and be ready to deliver the following morning.

There are those stores that require, because of a late delivery of merchandise, that meat be prepared that night. There is the time when a sale, special sale, might occur the following day and that would create a requirement for work that night. There is a variety of reasons in that regard, sir.

Q. Is there much overtime work performed after 6:00 P.M., as the result of this privilege?

A. No, sir. Practically none.

1279 Q. What is the basis for the union's opposition to night marketing hours?

A. That our membership don't want to work; that they would prefer being home with their families.

Q. How do you know that the butchers do not want to work at night?

A. Well, it has been a historical thing since I came with this organization. I was employed by them back in 1931. This was a tradition of the organization, that they did not want to work at night. Since I have been the secretary they have made themselves known many, many times in voice votes in our meetings, in our contract meetings, as late as last July, in health and welfare meetings, and in the case of Jewel just as far back as a matter of weeks ago, in the balloting that we took.

Q. Now, you mentioned a health and welfare meeting in 1962. Was such a meeting conducted among the employees of Jewel Tea Company?



A. Yes, it was.

1280 Q. What was the purpose of that meeting?

A. The purpose of that meeting was, as per contract, to give these members the option to elect whichever plan they care to be covered by, whether it would be by the company plan of hospitalization, or whether it be by the new union plan.

Q. And what was the vote of the Jewel employees on this question?

A. On the health and welfare question?

Q. That is correct.

A. The Jewel employees saw fit to retain the Jewel program.

Q. After the voting on the health and welfare plan, did something happen pertaining to the subject of market operating hours at this meeting?

A. Frankly, it was before the vote took place. Yes, it did.

Q. What happened before the vote took place?

A. Well, the union wanted to know the feelings of the Jewel employees, and it is seldom, if ever, that we get that many union meat cutters from Jewel under one roof.

We had in excess of 1100 meat cutters in that hall 1281 that day. We thought it would be a desirable time to get the sentiments of the people regarding night operation. We—myself, together with our attorney, brought them up to date on the progress of the litigation—

Mr. Christensen: Now wait. I am going to object to bringing up to date these conclusionary statements. It is bad enough as it is.

By Mr. Dunau:

Q. Please state what you said at that meeting?

A. We gave them a run-down of our present status in regard to night operation. We wanted to know whether or not they still felt as we thought they felt, and we wanted

their sentiments in that regard. We asked them to give us a voice vote as to whether we should forget the suit we were going into and sit down across the bargaining table again and see if we couldn't work out some program that would be of mutual benefit to both parties.

We took a voice vote. We asked if they wanted night work or didn't want night work. There was a unanimous no, that they did not want night work.

Q. Would butchers be able to earn more money if they worked at night?

A. Up to a point, yes, sir.

Q. Do the local unions oppose the operation of a service meat department, service after 6 P.M., without employees on duty?

A. Yes, they do.

Q. What is the basis for that opposition?

A. Because in our opinion they cannot operate without people on duty.

Q. And why do you have that opinion?

A. Well, there must be somebody on hand to take care of the counter, for the disarrangement that takes place in normal sale, and for the restocking and replenishing, for the cleaning of the cases, for the custom cutting that is required. And without it we don't think it can be done.

Q. Are there certain delicatessen items which are, may at present be sold after 6 P.M. in a self-service meat department?

A. Yes, there are some.

Q. What has been your experience with the sale of these delicatessen items after 6 P.M. without employees on duty?

A. We gave the employer the right to operate these certain delicatessen items beyond 6 P.M. with the feeling

that they would stock their cases and the cases would remain so until the closing hours of the market. We find that this is not the case. We find that in practically all cases that at some time during the course of the evening hours that that market is open, that somebody from the grocery department, the grocery clerk, the assistant manager, the manager himself, is rearranging and restocking the cases.

Q. Is there a question of work load involved in the opposition to operating a self-service meat department without employees on duty?

A. Yes, there is.

Q. Would you please explain that?

1285 A. Well quite truthfully, there would be an added work load each morning when people came back to work. They would have all the necessary work that would go into putting that counter back into proper shape, pulling out items that shouldn't be there.

There would be an added work load on Friday evening, on Friday afternoon, for Friday evening sales, that our people would get.

1286 By Mr. Dunau:

Q. Does the relationship of the service market to the self-service market play a part in the union's opposition to operating a self-service meat department, without employees on duty after 6 P.M.?

A. Yes, it does.

Q. What is that?

A. Well because one is competitive against the other. That if a self-service meat department were open at night without benefit of help it would become necessary that the service market be open likewise. The only possible way a service market can operate is with help.

Q. Would there be a loss of work from the service market to the self-service market, if the service market could not operate after 6 P.M. but the self-service market did?

A. Yes, there would not only be a loss of work; there would be a loss of employment for those people in that service market.

1287 Q. Now, other than the offer made by Jewel Tea which is in evidence as Plaintiff's Exhibit 10, which I show you, have you ever had an offer from Jewel Tea or any other employer for the operation of a self-service meat department without employees on duty?

A. No, never before.

Q. Mr. Kelly, did you in the course of the 1957, 1959 and 1961 negotiations, state that market-operating hours is a negotiable issue?

A. Yes, sir, I did.

Q. What did you mean by that?

A. Well, in the opinion of myself and all of the locals, anything is a negotiable issue. Marketing hours, I presume that if the proper provision were offered for the right to work, for the work that would be entailed, there would be some possibility of having it.

Q. Did you at the November 2, 1961 negotiating meeting, state in answer to a hypothetical question that to negotiate night hours on a limited basis of three 1288 nights a week is unrealistic and would be conspiring with a group of employers to limit operations to certain nights and hours?

A. Yes, I did.

Q. Did you make that statement for the sake of argument basis?

A. No. No, I did not.

Q. Did you make that statement accepting the assumptions that Mr. Vorbeck was stating to you?

1289 A. Yes, I did.

Q. In the 1961 negotiations, did you have any understanding or agreement with any employer that you would insist on maintaining opposition to night-operating hours?

A. No, sir.

Q. In any previous negotiations, did you have any understanding or agreement with any employer that you would insist on maintaining opposition to night-operating hours?

A. No, sir.

Q. To your knowledge, in the 1961 negotiations, did any other representative of the local unions have any understanding or agreement with any employer to insist on maintaining opposition to night-operating hours?

A. Not to my knowledge, sir.

Q. In the negotiations preceding 1961, to your knowledge, did any representative, any other representative of the local unions, have an understanding or agreement with any employer to insist upon maintaining opposition to night-operating hours?

A. Not to my knowledge.

Q. Do you formulate your position on the subject of night-operating hours based exclusively upon what you regard to be the best self-interest of the members?

A. I certainly do.

Q. To your knowledge, do other representatives of the local union base their position about the subject of night-operating hours, based exclusively upon what they regard to be in the best self-interest of the members?

A. Yes, they do, sir.

1291 Q. In 1957, how many stores did Hillman operate?

A. I would say ten, sir.

Q. How many self-service?

A. Approximately seven.

Q. And were the remainder service?

A. Yes, they were.

Q. At the present time how many stores, meat departments, does Hillman's operate?

A. It is my belief they are now a self-service, with the exception of one.

Q. How many are there?

A. I believe there are thirteen now, sir.

Q. When you gave us the figure of 10 in 1957, were you referring to stores in which meat departments operate?

A. Yes, sir.

Q. In 1957, how many stores did Goldblatt's operate in which meat departments were open?

A. I would say approximately nine.

Q. How many were service?

A. They were all service.

Q. Has Goldblatt's since gone out of the operation 1292 of the meat departments?

A. Yes, sir. They have.

Q. In 1957, how many stores did Safe Way operate with a meat department?

A. I believe only one, sir.

Q. Was it service or self-service?

A. It was self-service.

Q. At the present time how many stores with meat departments does Safe Way operate?

A. Two, now.

Q. Are they both self-service?

A. Yes, they are.

Q. Is Safe Way a member of Associated Food Dealers?

A. Yes, they are.

Q. In 1957, how many meat departments did Pick and Save operate?



A. I would say approximately seven, sir.

Q. Were they service or self-service?

A. They were all self-service.

Q. At the present time how many meat departments does Pick and Save operate?

1293 A. I believe approximately ten now.

Q. Are they service or self-service?

A. They are all self-service.

Q. Is Pick and Save a member of the Associated Food Dealers?

A. Yes, they are.

Q. In 1957, how many meat departments did Mayflower operate?

A. One, sir.

Q. Was it service or self-service?

A. Self-service.

Q. At the present time how many meat departments does Mayflower operate?

A. Two, now.

Q. Is it service or self-service?

A. Both self-service.

Q. Is Mayflower a member of Associated Food Dealers?

A. Yes, they are. But the Associated Food Dealers does not sign their contract. They sign them themselves.

1294 Q. Does the membership of Associated Food Dealers include employers who operate one food store?

A. Yes, sir.

Q. Do some of those employers who operate one food store operate a self-service meat department in that store?

A. Yes, they do.

Q. Do other employers who operate one food store operate a service meat department in that store?

A. Yes, they do.

Q. Do some members of Associated Food Dealers operate more than one store?

A. Yes, sir, they do.

Q. Of those members who operate more than one store, did some of them operate all their meat departments on the self-service basis?

A. Yes, sir, they do.

Q. Do others operate their meat departments, some on a self-service basis and others on a service basis?

A. That's right, sir, they do.

Q. Do you know of any employers who are members of Associated and operate more than one store that  
1295 operate other meat departments on a service basis?

A. at the present time?

Q. Yes?

A. Yes, sir, I do.

Q. If members of the defendant unions went out on strike would they be without earnings for the duration of the strike?

A. They would be without some income for at least the first two weeks of the strike.

Q. What would happen at the end of the first two weeks?

A. Well, our International union has a strike fund that takes effect in the third week of any strike that has been sanctioned by the International Union.

1296 Q. What is the amount of the strike benefit?

A. \$20 per week, sir.

Q. In 1957 what was the rate of pay of a journeyman meat cutter?

A. I would have to hazard a guess at that. I believe approximately \$117 weekly.

Q. Could a meat cutter find employment as a meat cutter in other places while he was on strike against his own employer?

A. No, sir.

1298

*Cross-Examination by Mr. Christensen.*

Q. Mr. Kelly, I understood you earlier this afternoon to testify that before the year 1941, that Local 546 did the bargaining with whatever employer or employer groups it was bargaining with at that time, and that what was done or accomplished in the bargaining was passed on to the other locals. Am I correct?

A. Yes, sir.

Q. You testified also that beginning, at least in the year 1931, and you don't know how much earlier, the terms of all meat cutter labor contracts in the Chicago area were identical?

A. I don't recollect that, sir.

Q. Well, let me ask you as a fact then, were they identical?

A. I will say that inasmuch as wages and working conditions were concerned, there was a possibility of there being a variance.

But as far as the closing hours and opening hours, they were identical, yes, sir.

1299 Q. Oh, well this is what I didn't understand, because you also said that in 1941 some of the locals had fallen behind, was the note I made here.

A. Yes, sir.

Q. I didn't understand how the terms could be identical and yet some had fallen behind. It is your impression that perhaps prior to 1941, 546 had a little better wages or better working conditions than some of the others, is that what I am to understand from your testimony?

A. It is not my impression, sir. I know that's true, that is the case.

Q. And your testimony as to the terms being identical was restricted solely to market-operating hours?

A. That is right, sir.

Q. The only ratification meetings pertaining to the 1957, 1959 or the 1961 contracts that you attended and have personal knowledge of, are the ratification meetings of Local 546, isn't that so?

1300 A. Yes, sir, that's right.

Q. You testified a little bit ago about a representative of National Tea coming to you after the 1957 strike vote had been taken, came to your office and talked with you?

A. No, sir, I didn't say that.

Q. Well, what—

A. He contacted me by telephone, sir.

Q. By telephone?

A. Yes.

Q. I misunderstood you. And that was Mr. who?

A. Mr. Robert Cone.

Q. Mr. Robert Cone?

A. Yes.

Q. He told you that National Tea would not litigate with you?

A. Yes, sir; that's right.

Q. And they were going to sign the contract?

A. Yes, sir.

1301 Q. With a night restriction on it?

A. Yes, sir.

Q. But I made a note here that your testimony was he said they were prepared to take a strike?

A. That is correct, sir.

Q. Well, Mr. Kelly, I have difficulty following. They are prepared to take a strike, but they weren't going to take a strike, they were going to accept the contract.

Now, the conversation—I just don't understand it.

A. Maybe I can explain it clearer, Mr. Christensen: They had been prepared to take a strike, but they made a decision to accept the contract.

Q. Oh, they changed their mind and were not prepared to take a strike and accepted the contract?

A. That is right. That is right, sir.

Q. Now, in the year 1961, you required Mr. Bromann, or asked him, to give you a list of the employers who he was authorized to sign for?

1302 A. Yes, sir.

Q. Then did he sign contracts in the name of Associated for those three hundred and thirteen employers?

A. Well, a single signature on the part of the Associated would cover all three hundred thirteen, because they had authorized his signature, sir.

Q. And that is the practice you had followed with Associated for a good many years, was it not?

A. Yes, it was.

Q. And only in this instance, because of the advent of the pension and welfare—or the Health and Welfare, I beg your pardon—you wanted an accurate list of those who were covered by it?

A. That is right, sir.

Q. And Bromann has signed the '57 contract and the '59 contract, as well as the '61?

A. Yes, sir, he had.

Q. In the name of Associated?

A. Yes.

Q. You testified this afternoon that the union 1303 changed its position as to the sale of poultry, because of competition in that from delicatessen stores and places where butchers did not work.

Your were losing the sale of fresh poultry because frozen poultry was setting in?

A. I don't believe I said that, sir.



Q. I don't mean to misquote you.

A. Would you re-address your question, please?

1304 Q. You testified this afternoon with respect to your reasons?

A. Yes, sir.

Q. For permitting the night sale of frozen poultry from self-service case?

A. Yes, sir, I did.

Q. Now, if I have misunderstood your reasons, please state them again?

A. We were in—we were in request from the employer to give them the right to sell this poultry because it was being sold as frozen poultry, by delicatessens and small "Pop and Mama" stores who were in direct competition to them. We felt in fairness to these employers who were employing the union membership that we represented that they should have such a right. This is the reason they have the sale of frozen poultry.

Q. And they could get that right from you? That was a right you could give or withhold?

A. I believe it was a part of negotiations, sir.

Q. Now, do you now permit the sale of fresh poultry at night?

1305 A. Yes, sir, we do.

Q. And that is for the same reason, essentially?

A. Well, actually, because frozen poultry had made such inroads into the fresh poultry market as far as our meat cutters were concerned, they were losing certain of their work, and in order to keep their work, we permitted the sale of fresh poultry if it were processed on the premises.

Q. Now, do you know what a TV dinner is?

A. Yes, sir.

Q. What is it?

A. Well, if you mean have I eaten it, I can't say I have. I have seen—



Q. I didn't ask you that. You said you knew what it was?

A. Yes, sir.

Q. Please tell me what it was.

A. It is a frozen dinner, sir.

Q. It contains meat, does it not?

A. Yes, it does.

Q. And have you made any survey as to the quantities of these TV dinners that have frozen meat in them  
1306 that are being sold by the major chains in the last few years?

A. No, sir, I haven't.

Q. That meat is not cut by butchers on the premises, is it?

A. It is a precooked meat, sir, and that is the reason they are permitted to sell them as they are.

Q. Please answer my question.

A. No, apparently not, sir.

Q. And, of course, one of the alternatives for a purchaser who wants a little meat, can't buy it at night, is to buy a TV dinner that is sold out of a different case by grocery clerks, isn't that right?

A. I would imagine so, yes, sir.

Q. And to the extent that goes on and you are refusing to let Jewel meet that competition, you are taking work away from your own members, are you not?

A. No, sir.

Q. You are not? You don't see the similarity between that and the poultry situation?

A. No, sir, I don't.

1307 Q. No connection?

A. I don't think there is.

Q. You don't see it at all?

A. No, sir.

Q. Now, you have testified about the added work load.

Isn't it a fact that the work load of any individual butcher in a store remains fairly constant, it is not a precise science, and that as volume increases butchers are added or subtracted from the staff?

A. Up to a point, sir, yes, you are right.

Q. In 1950, there was no self-service of meat in the Chicago area, in any of these locals, was there?

A. No, sir.

Q. Approximately how many members did Local 546 have in the year 1950?

A. I would say approximately 40 to 100 members, sir.

1308 Q. In 1961, how many members did 546 have?

A. Retail members, we had approximately the same figure. We added the A&P meat commissary to our membership with another 250.

Q. And in the ten or eleven year interval, can you express any judgment as to the proportion of your membership that came to work in self-service markets?

A. I don't understand your question, sir.

Q. Well, all right.

You have between 4500 and 5000 members?

A. Yes, sir.

Q. Pretty close to 1500 of them are employed by Jewel, are they not?

A. Not in this particular local that you are speaking of.

Q. Well, I beg your pardon.

Approximately how many of that local's members are employed by Jewel?

A. I would say 700, sir.

Q. 700. And of those 700, approximately how  
1309 many of them work in service stores?

A. For Jewel?

Q. For Jewel.

A. I suppose you could count them on your hand.

Q. I would think so.

A. Yes.

Q. Now, roughly the same proportion obtains as to the other major chains, does it not, that the great bulk of them work in self-service meat markets?

A. That would be an approximate idea, yes, sir.

Q. And the advent of self-service meat markets in the Chicago area has not diminished the work of your members, has it?

You are bigger and stronger and wealthier today as a local than you ever were, is that correct, Mr. Kelly?

1310 A. I would say yes, sir.

By Mr. Christensen:

Q. Mr. Kelly, you expressed the opinion that market operating hours was a negotiable subject so far as you were concerned or I assume so far as your local was concerned. Am I correct?

A. Yes, sir, you are.

Q. You also said that you presumed that for a sufficient amount of money an employer could buy nearly anything, any operating hours, or words to that effect, did you not, this afternoon—

A. Somewhat in essence, I did say that.

Q. Well, if that isn't the sense of it, you state it the way you think it should be stated?

1311 A. I think I stated along somewhat similar lines that if the money involved was sufficient that certainly people have a way of changing their minds.

Q. All right. Now, at one time they offered you 25 or 50 cents a night. You said that was too low. Isn't that correct?

A. Yes, sir, I did say that.

Q. At another time, you were offered time and a half?

A. No, sir.

Q. You have never been offered time and a half?

A. We have been offered time and a half but if you will really look at this offer as it was made to us, it only represents half time, sir, not time and a half.

Q. You mean they wanted people to work for less money after 6:00 o'clock?

A. No, sir. These people would have obtained straight hour work rates no matter when they worked. They offered time and a half, so to us it was half time. It wasn't true time and a half. It was based on a flexible work day, sir.

1312 Q. Well, you had an offer after this trial started for time and a half, didn't you?

A. Yes, we had some offer—we had an offer for time and a half; that's right, sir.

Q. And didn't you express an opinion two or three years ago that an offer of time and a half in your judgment was no good because it was so high a premium that market operators would cheat on it and induce some of your members to get more work to kick back or not to take time and a half?

A. I never said that.

Q. You never said that?

A. No, siree.

Q. Well, do you think that time and a half then is not too high a premium, is a fair premium for work after 6:00 o'clock.

A. If it is true time and a half, yes, sir.

Q. That's a fair premium?

A. I would think so. I don't know whether I can convince the membership we represent on that.

Q. Now, as I understand two or three sweeping  
1313 answers you gave at the tail end of your examination, you never had an understanding or agreement with

any employer that you would insist, you, Local 546, would insist on opposing or maintaining opposition to night market-operating hours?

A. Did you say an understanding with another employer?

Q. My notes show, and I tried to copy it down as best I could, you never had an understanding or agreement with any employer that you would insist on maintaining opposition to night market-operating hours?

A. That is correct, sir. I never did.

Q. But you have consistently taken the position that the entire industry or the great majority of it had to go along on a program or you would not agree to any night market-operating hours, isn't that also correct?

1314. A. No, that is not correct, sir.

By Mr. Christensen:

Q. That is not correct?

A. No, sir.

Q. And you didn't take the position that it was unethical or improper for Jewel to make its separate offer and to stand out against the rest of the industry?

A. I, personally, thought it was unethical, yes, sir.

Q. Mr. Kelly, to go back to the year 1957, and there has been testimony here and I think you were in agreement that on November 1st of 1957 Mr. Morse and Mr. Vorbeck of the Jewel Company called upon you at your office and discussed the situation with you and made you an offer?

A. I don't believe I have said anything about that, sir.

1315. Q. I didn't say that.

A. Oh. Are you posing the question to me?

Q. Yes. I am trying to direct you to the episode, that's all.

A. I believe there was an occasion such as that.



Q. So you can get it in context.

A. Yes, sir.

Q. Now, I am going to ask you about that particular conference or meeting.

Pardon me, I withdraw that. I was in error. I have got the wrong time.

I want to refer you to the meeting of October 22, 1957, at the Bismarck Hotel—no—November 1st meeting at the Bismarck Hotel.

Do you recall that the private meeting you had with Morse and Vorbeck was at your office and after you had that discussion you suggested everybody go over to the Bismarck, where the general meeting was in effect?

A. I have a recollection of such a meeting, sir.

Q. All right.

1316 Now then, at that general meeting, do you recall that you had a—in a break period or a private caucus you and Mr. Neilubowski had with Ed Vorbeck and Mr. Morse, in which you and Mr. Neilubowski said that you couldn't recommend the Jewel offer because it contained two conditions which you regarded as unlivable, the first being the provision Jewel wanted for female wrappers and the second being the absence of time and a half provision for work after 6:00 P. M. and also after forty hours?

A. No. Quite frankly, I can't recollect that.

Q. And that you then expressed the opinion that the time and a half was not good for your membership because you were well aware that if an employer had to pay such a high price for additional work, there would either be no additional work or if there was, it would be scabbed at straight time.

A. I can't remember having said that.

1317 Q. Can you take your oath you did not say it?

A. I would be inclined to take an oath I did not say it, sir, yes.



1318 Mr. Dunau: If your Honor please, the only things that we have remaining, subject to a check, are some exhibits which I would like to introduce at this time.

Defendant Union's Exhibit 8, which is a stipulation pertaining to the number of self-service markets and service markets and the number of employees in each as to designated employers, was previously offered and ruling was reserved. At that time objection was made that the information was not complete.

We have through the testimony of Mr. Kelly and Mr. Vorbeck, given the information as to every other employers who has been identified in the course of the negotiations.

The Court: Have you seen this, Mr. Christensen?

Mr. Christensen: No, I have not. I assume it is the same format as you had before.

Mr. Dunau: Well, it is what has been offered in evidence before.

The Court: Is there any objection now?

1319 Mr. Christensen: No objection.

The Court: It is admitted.

Mr. Christensen: What is your number, Mr. Dunau?

Mr. Dunau: It is Defendant Union's Exhibit 8.

(Said exhibit, so offered and received in evidence, was marked DEFENDANT UNION'S EXHIBIT 8.)

Mr. Dunau: Would you mark this Defendant Union's Exhibit 46 for identification please?

(Said document was marked Defendant Union's Exhibit 46 for identification.)

Mr. Dunau: If the Court please, there was previously received in evidence as Defendant Union's Exhibit 4 a tabulation as to the number of stores in 1961 of Jewel Tea in which fresh meat was sold in 1961.

I have an identical tabulation for 1960 with respect to the stores selling fresh meat after 6 P. M. in that year. I offer

that in evidence on the same basis as the Defendant Union's Exhibit 4 which was previously received.

Mr. Christensen: What was this made from?

Mr. Dunau: This was made from—the figures 1320 were taken, the sales WPS, and earnings, were taken from Defendant Union's Exhibit 35, which was furnished to us by Jewel Tea.

The identification of stores in which fresh meat was sold after 6 P. M. were taken from Plaintiff's Exhibit 16 and Plaintiff's Exhibit 13 and 13-0, which were likewise information furnished by Jewel Tea.

Mr. Christensen: Well, your Honor, this is simply a confirmation. It is an argument, I think, rather than an exhibit.

We have no objection to it subject to correcting it for clerical accuracy. I assume it is correct, but I would like to—

The Court: It is received.

Mr. Dunau: It is as correct as I can make it.

Mr. Christensen: What number is that?

Mr. Dunau: That is 46.

(Said document, so offered and received in evidence, was marked DEFENDANT UNION'S EXHIBIT 46.)

Mr. Dunau: Would you mark that Defendant Union's Exhibit 47 for identification?

(Said document was marked Defendant Union's 1321 Exhibit 47 for identification.)

Mr. Dunau: Defendant Union's Exhibit 47 is a comparison of the 32 stores in 1960 which sold fresh meat after 6 P. M., with the divisions of the stores in which no fresh meat was sold after 6 P. M., and in all the stores in which no fresh meat was sold after 6 P. M.; it is identical with Defendant Union's Exhibit 5 for the year 1961, except for the addition of the compilation of all stores in which no fresh meat was sold after 6 P.M. On the exhibit there

is identified the material from which it was taken and the method used to obtain it.

1322 Mr. Christensen: Your Honor, this is a complicated accounting exhibit, if you look at it on its face.

I would think this should be supported by some testimony, if there can be any, as to the statistical accuracy of the method employed and what it tends to prove, if anything.

We have not subjected—

The Court: Well, is there any evidence in the record that would be the basis for this?

Mr. Dunau: All the evidence in which this exhibit is based is in the record, your Honor, and identified on the exhibit—the exhibit identifies the other exhibits from which this information is taken.

Mr. Christensen: Well, what they do, the basic data, according to the face of the document, and I assume it is being offered in any event subject to our checking it for accuracy, they divide up earnings and then they make, show percentages of earnings for sales of meats.

Then they pull some out and divide by 216, and the resultant is divided by 52 to give the sales per week for all stores not selling fresh meat after 6:00 p. m.

1323 There are too many steps with playing with these figures and coming up with results. I cannot tell whether the 32 stores are taken out of the divisions or are not in the divisions.

This needs a statistician and an accountant to explain it. We should have a witness on the stand that we can cross examine at some length as to this particular document. This is not a simple document.

Mr. Dunau: If you Honor please, it needs no statistician, mathematician or any other type of arithmetical genius. This is identical with Defendants' Exhibit 5, which is already in evidence.

The first column, "Thirty-two stores in which fresh meat is sold," those are taken from Defendant Unions' Exhibit 46, which is already in evidence.

The figures under divisions 2, 3, 4, 5 and 6, are taken straight from the plaintiff's own exhibits, without any compilation of any kind.

The last figure, the last column, "All stores in which no fresh meat sold after 6:00 P. M." is a compilation based upon figures taken from plaintiff's own information, 1324 and it is a very simple kind of a thing.

The Court: Well, suppose the Court receives it subject to your objection, have your accountant check it, analyze it and check it against these other exhibits as counsel said?

Mr. Christensen: Well, of course, Judge, that is a possible way of doing it. But it casts a burden on us of trying to decipher what is going on, instead of putting it as we think it should be, upon the proponent of the document to stand up and tell what he has done about it.

Mr. Dunau: Well, I was about to explain just exactly what was done with it. It requires no witness, because it is simply an explanation based on the use of your own witness:

You take from your report, 3-F, which shows you the total sales per week per store. That figure of 352,633,819, is drawn from defendant Unions' Exhibit 3-F.

That figure is reduced by 782,841, and that is taken from defendant Unions' Exhibit 46, already in evidence, and represented the sales of those stores in which fresh 1325 meat was sold after 6:00 P. M.

The difference therefore is the sales in those stores in which no fresh meat was sold after 6:00 P. M.

There were 216 such stores. You divide the total of sales by 216, and that gives you the total sales for each store in which fresh meat was not sold after 6:00 P. M.

Now, to get it per week per sale, you simply divide that from 52, and it is pretty obvious there are 52 weeks in a year. In any event that is also taken from information provided by the plaintiff.

The same compilation is made with respect to earnings.

Mr. Christensen: Well, Judge, look at the document. I still don't understand it. I may be unduly dense.

I see no Division 1, here. I don't know what he has done with Division 1.

1326 Mr. Dunau: Division 1 is excluded, because in Division 1 you—

Mr. Christensen: Well, I—

Mr. Dunau: Let me explain it, Mr. Christensen.

Mr. Christensen: I say, this is a partial segregation of figures, your Honor. We should have a statistician, and I should not be in an argument with counsel about it.

Let him put somebody on and explain it, if he can. This is no simple thing. This is a selection of some figures that they have made up, some figures we furnished them, and then a fertile mind has gone to work on it.

The Court: Is there anybody here who made this up?

Mr. Dunau: I made it up, your Honor. I am willing to explain every step in the process.

All that is necessary is to determine the validity of this process. There is no point in questioning witnesses for the purpose—as I said when we had the argument on

Defendants' Exhibit 5 for the year 1961, which is in 1327 evidence, the only difference—this is virtually the same thing for the year 1960, except that I have done the arithmetic with respect to all the stores.

If I were not to offer it in evidence but to append it as an exhibit to a brief stating this is what can be inferred from the information already in, there wouldn't be a possible basis for objection to that argument.

The only basis would be an objection to the validity of



the argument. But we do it this way. It is more convenient.

Mr. Christensen: Mr. Dunau, you tell me in one breath it is all the stores, and in another breath you have left the Division 1 out altogether.

Mr. Dunau: If you let me explain it, there is no mystery. Division 2, 3, 4 and Division 6 are all stores in which no fresh meat were sold after 6:00 P.M.

The information as to those stores was taken straight from defendants—from Jewel's own information.

1328 Now, when I go to all stores, then I have to do a little more arithmetic, because all stores would include also Division 1, in which there are some stores which sell meat after 6:00 P.M., Division 7, in which there are some stores that sell meat after 6:00 P.M., and Division 8, in which there are some stores that sell meat after 6:00 P.M.

We know the total of the stores. We know those stores in which no meat was sold after 6:00 P.M.

We also know the stores in which meat was sold after 6:00 P.M.

It has been a simple process of arithmetic to add up—well, it takes from our information—you have given us, in your own exhibit, the information with respect to the total sales.

Already in evidence is the information with respect to the sales of the thirty-two stores which were open after 6:00 P.M.

You subtract it and inexorably you get the information from sales in the stores which were not open after 6:00 P.M.

1329 We know the number of those stores. So we divide by that number, and that gives us the number of sales referable to each store which does not sell after 6:00 P.M.

We also know it is a 52-week operation, so it doesn't



take much arithmetic to divide that and get PWPS for each store.

Mr. Christensen: Your Honor, perhaps I can state my objection:

We furnished them our report showing Jewel Food Stores sales and earnings, comparative statement for the years 1960 and 1961. We showed that in the year 1961 that the total average company per week per store, and the company total, was 4.6 in 1961, a decrease from the year 1960, which had been 4.9.

Now, in one of these documents, which counsel has made up, his Defendants' Exhibit 5, he adopts our figure of 4.6. But he has brought it down from what is in here, and here comes up with a new figure of 4.8.

1330 None of his figures jibe with what he has taken it from, and it is impossible—

Mr. Dunau: It would be—

Mr. Christensen: Just a minute now, I didn't object at all when you made that long speech.

It is impossible, without having a witness, and I don't want to stand here and argue with my brother lawyer indefinitely; we think we are entitled to have a witness on the stand that can be cross-examined as to how these statistical marvels take place.

Mr. Dunau: There is no statistical marvel, your Honor; if you compare 1961, Defendants' Exhibit 5, with 1960, you are sure going to get different information.

What's the reason for comparing them?

1331 Mr. Christensen: Because you come up with different answers. You show our profits going up, when they went down.

The Court: I think I will have to sustain the objection, counsel.

Mr. Dunau: If your Honor please then, may this be received, excluding the compilation on the last column,

because this is the only thing in which any arithmetical matters which are different from what is already in evidence have been contained.

The Court: What do you say as to that?

Mr. Christensen: Well, it is again a partial thing. Frankly, Judge, I may be dense, but I don't understand this.

The Court: All right, the objection stands. I mean the ruling stands.

Do you have any others?

Mr. Dunau: Yes, sir, I do.

If your Honor please, may this be for the purpose of keeping the record in some sort of coherent order, received as an offer of proof?

The Court: It may.

1332 Mr. Dunau: Then, if I understand it, Defendant Unions' Exhibit 47, the comparison pertaining to 1960, is received as an offer of proof.

Would you mark this Defendants' Exhibit 48, please.

(Said document was marked Defendant Unions' Exhibit 48, for identification.)

Mr. Dunau: Defendants' Exhibit 48 is an identical compilation for the year 1959, with respect to the stores which sell meat after 6:00 P.M., as has already been received in evidence with respect to the years 1960 and 1961.

Mr. Christensen: No objection to that.

The Court: It is admitted.

(Said document marked DEFENDANT UNIONS' EXHIBIT 48, for identification, was received in evidence.)

Mr. Dunau: Mark this as Defendant Unions' Exhibit 49, please?

1333 (Said document was marked Defendant Unions' Exhibit 49, for identification.)

Mr. Dunau: Your Honor, Defendants' Exhibit 49, which I offer, is a comparison for the year 1959, of the same type

which was offered for the year 1960, as to which an objection was sustained and it was received as an offer. I presume therefore there should be the same disposition with respect to this exhibit.

The Court: Received as an offer.

1334 Mr. Dunau: Mark this as Defendant Unions' Exhibit 50, please.

(Said document was marked Defendant Unions' Exhibit 50, for identification.)

Mr. Dunau: Defendant Unions' Exhibit 50, for identification, is a comparison for the year 1958, of the stores selling fresh meat after 6:00 P.M., as against stores not selling meat, for the year 1958. The footnotes explain the basis upon which this computation was made.

1335 Mr. Christensen: Again, your Honor, this appears to be, and I assume you brought the subject for our right to object to the figures, but this appears to be just a selection of stores that didn't sell meat with those that did, irrespective of size, volume, or other conditions.

The statistical validity of it is then established by no one, if that proves anything as to the effect of night sales, because of the various factors we all know are involved. I think that merely clutters the record.

One can take a complicated set of drawings and take portions of them and go on ad infinitum. We are up to fifty exhibits now, and I think counsel is just cluttering the record.

I am perfectly willing to have him make whatever showing he can make, but I don't think it helps anybody. I must object to it.

Mr. Dunau: The specific reason was that there are stores that sell meat after 6 P.M., and stores that do not sell meat after 6 P.M. That is precisely the objection we pointed out on Plaintiff's Exhibit 13, that they select 1336 nine stores that sell meat after 6 P.M., they give

us a history between before and after, because of a change of hours, and they take those nine and compare them with all other stores and say that it is valid.

Then we come and make the same assumption they make and compare all stores in which meat was not sold after 6 P.M. with all stores in which meat was sold after 6 P.M., suddenly the assumption on which plaintiff acts becomes invalid when the defendant adopts it.

Mr. Christensen: I find it difficult to believe that as intelligent and alert a man as Mr. Dunau can be as confused as he is. This exhibit, your Honor, is utterly different from the ones that Counsel is talking about. In effect, what we were doing is comparing a store, with all its weaknesses and all its strengths, against itself in a period that you could make, as against comparable performance in the chain.

We are comparing like with like. For Counsel to assert to the Court that the statistical basis of this is 1337 the same as this one displays a lack of comprehension on Mr. Dunau's part that I find difficult to believe.

The Court: The Court will sustain the objection and receive it as an offer of proof.

Mr. Dunau: Very well, your Honor.

Your Honor, subject to a check of this mass of papers to be sure I haven't left out something that should be in, we have rested.

The Court: The defendant rests.

1338

Thursday, November 29, 1962,  
10:00 o'clock, A. M.

Court convened pursuant to adjournment.

1339 The Clerk: 58 C 1415, Jewel Tea Company vs. Local Union 189.

The Court: Proceed, please.

Mr. Christensen: Are you resting?

Mr. Dunau: Yes, I am resting.

Whereupon the defendants rested their case.

1340 And thereupon the plaintiff to further maintain the issues on its part, introduced the following evidence in rebuttal, to-wit:

JAMES VICTOR BRODNICKI, called as a witness on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

*Direct Examination by Mr. Christensen.*

Q. Mr. Brodnicki, you are the same James Brodnicki previously sworn and examined in this case?

A. Yes, sir.

Q. I hand you a document marked Plaintiff's Exhibit 21, for identification, and ask you if that is a Xerox reproduction of an accounting sheet which you have prepared?

A. Yes, sir.

Q. It is headed, "Comparison of near and far stores which sell meat at night for year 1961." Did you  
1341 devise that title?

A. Yes, sir.

Q. Then in the left-hand column appears the letter A,



indicating a sub-classification, "Closest stores to Melrose", and further down B, "Furthest stores from Melrose."

What is that Melrose?

A: Melrose is our headquarters office, and it is also our primary supply warehouse.

Q. That is Melrose Park, Illinois?

A. Yes, sir.

Q. Now, did you take the 33 stores that sold meat at night and just divide them into two classifications by district, split them right down the middle?

A. Yes, sir, the near and far from Melrose.

Q. And because there were an odd number of 33, you couldn't quite split them in the middle. There are 16 stores, as I count it in your near classification, and 17 in your furthest?

A. That's right.

Q. You show the number, location of each of these stores, and then as you get into the columns to your  
1342 right, the first column is headed, "Total sales PW-PS". Does that mean total sales per week per store?

A. Yes, sir.

Q. And from what stores, taking, for example, the first store, 15, Aurora, did you derive the figure \$15,638.00?

A. From our company records.

Q. And the same is true as to each of the others?

A. Yes, sir.

Q. Other stores. Now, the next vertical column to the right on your exhibit is headed, "Annual Earnings", and you show on 15-Aurora a minus, or in parentheses, in accounting language, that indicates a minus \$4,107.00?

A. Yes, sir.

Q. From what source did you derive that?

A. Our company records.

Q. Your next vertical column headed, "Earnings as a percentage to total sales of the store," and as to 15-Aurora,



you show a minus .5 per cent. From what source did you derive that?

1343 A. From our company records.

Q. Now, you then have a blank column and you have two expense columns headed, "Annual expense charge for transportation" and another for "Advertising". From what source did you derive those figures?

A. Our company records.

1344 Q. Does the company, as a standard accounting practice, break down, as charges against each store, the amount of transportation expense in transporting merchandise to the store for sale?

A. They do.

Q. And as to advertising, do you maintain a similar accounting as to each store?

A. Yes, sir.

Q. And the figures reflected in those respective columns are the figures relied upon by the company in its usual course of business from the permanent records kept by the company indicating those expenses in the year 1961 to the stores, is that correct?

A. Yes.

Q. Now, just before the horizontal line B, you have two horizontal lines, one headed "Average per store per week," and the other "Average per store per year."

Do those two averages pertain to the figures immediately above them under the heading A, "Closest stores to Melrose"?

1345 A. Yes, those are totals of those groups. Totals and averages.

Q. Well, they are not totals, are they? They are—

A. They are totalled down and averaged, so they are the average of the above figures.

Q. They are the average of the above figures?

A. Yes.

Q. And they show that the total sales of the sixteen stores that were closest to the warehouse, the average sales were \$29,779 per week, is that correct?

A. Yes, that's correct.

Q. Now, did you follow a similar method of averaging with respect to the stores in Group B, those that were serviced from the warehouse?

A. Yes, I did.

Q. And those stores showed a slightly lower average sales volume than the stores in A, as I read that figure of \$28,463, am I correct?

A. Yes, sir.

Q. Again the average annual earnings per week of 1346 near-in stores in the year 1961 was \$961 a week, as compared with a loss of \$90 per week on the furthest-out stores, am I correct?

A. Yes, sir.

Q. And the earnings percentage was 3.2 per cent, if I read you correctly, of the near-in stores?

A. Yes, sir.

Q. Whereas the further-out stores lost 3/10 of a per cent?

A. That's right.

Q. Now, going to your annual expense charges, did you compute that the near-in stores had an average per week transportation expense of \$466 a week?

A. Yes, sir.

Q. Whereas the further-out stores had \$617 per week?

A. That's correct.

Q. And for advertising the average expense was \$125 per week for the near-in group, and it was \$255 per week for the further-out group?

A. That's correct.

1347 Q. Now, at the extreme foot of the sheet you have a caption or a heading, "Expense of Remaining Stores of Company Average per Year."

How did you compute those figures of \$14,390 and \$5,836?

A. By determining the total transportation expense and advertising expense of the company, I was able to derive company averages for each of these two figures, and then I went on to exclude these stores to take them out of the company.

Q. I see.

A. So they are company averages, excluding these thirty-three stores we are looking at.

Q. And that shows that both of these groups of stores ran above the company average in transportation and expense charges?

A. Considerably.

Q. Now, you have inserted, apparently in pencil, far-store expense over near-stores. That is simply a percentage compilation, is it not?

A. Comparing the further-out stores with the near-in stores showing a percentage difference.

1348 Q. As an accountant, what conclusion do you draw from this sheet as to the effect of distance to a store from your principal warehouse upon its profitability?

A. As we go further and further out from our primary supply, sources of supply and our headquarters, we find that, as seen by these two expenses, our stores become less and less profitable to the point where when they get far enough out, our stores can even operate at a loss.

We have drawn many perimeters around our city and have seen this relationship for other reasons, also.

Q. Do you have the Defendants' Exhibits 4, 5 and 6 there?

A. Yes, I do. I have all of them.

Q. In Exhibits prepared by Mr. Dunau, Defendants' Exhibits 4, 5, 6 and 7, and perhaps 46 and some others, stores were segregated and comparisons were drawn sim-

ply upon the basis of whether a store did or did not sell meat at night with respect to the entire chain.

1349 In your judgment as an accountant, what does Exhibit 21, Plaintiff's Exhibit 21 for identification, tend to show with respect to the validity of conclusions to be drawn from the Defendants' Exhibits to which I have referred?

1350 A. Referring to Exhibit 3 of Defendant, I believe an unfair inference could be drawn from that exhibit, leading one to believe that the selling meat at night could actually make stores less profitable, whereas in my opinion or judgment what could make a store unprofitable is being so far out from our lines of communication and our supply, as shown here where transportation in far out stores can be even double what it is in the close-in Chicago stores:

And for comparable newspaper advertising the expenses can be also over double what it can run for a Chicago store.

In my judgment I would say it would not surprise me if these far-out stores would be less profitable than the close-in Chicago stores and suburban stores, primarily because of the distance factor.

Mr. Christensen: I will offer Exhibit 21, in evidence, if it please your Honor, Plaintiff's Exhibit 21.

1351 Mr. Dunau: May I have the witness, your Honor.

The Court: Yes.

*Cross-Examination by Mr. Dunau.*

Q. Mr. Brodnicki, my copy is not very clear. Under, "Annual expense charged for advertising" in the last column, your average per store per week, what is that figure?

A. \$13,234.00.

Q. No, the figure above that?

A. \$255.00.

Q. \$255.00. And what was the one below that?

A. \$13,234.00.

Q. Then on the right margin opposite 103 per cent, what does that state?

A. Sorry, where?

Q. On the opposite right—

A. Oh, I was going to try to write in this footnote here, but there wasn't room and I merely wrote it in here.  
(Indicating.)

1352 Q. Oh, I see. You started to write?

A. "Far stores expense over near stores," and I erased it and put it over here.

Q. On the left side?

A. Yes, sir.

Q. Mr. Brodnicki, where is Melrose Park located?

A. About four miles west of the City, I believe.

Q. The City of Chicago?

A. Yes, sir.

Q. What is the distance of your nearest store from Melrose Park that you have on Plaintiff's Exhibit 21?

A. The nearest one to Melrose Park?

Q. Yes?

A. I don't have any mileage figures right now.

1353 Q. Do you know?

A. I would have to refer to some other calculations to show the mileage?

Q. Do you have them with you?

A. I don't believe so, but I could say this could be developed by looking at a map to develop the distance.

Q. The question was what is the distance?

Mr. Christensen: That has been asked. I object to it.

The Court: Overruled.

By Mr. Dunau:

Q. Is the answer, you don't know?

A. Developing this exhibit—

Q. Is the answer, you don't know?

A. That would be our Elgin stores, our Joliet stores.

Q. Mr. Brodnicki, do you know the distance from Melrose Park to the nearest store identified on Plaintiff's Exhibit 21?

A. Not without referring to a map.

Q. Do you know the distance from Melrose Park to 1354 the furthest store you have identified on Plaintiff's Exhibit 21?

A. About 78 miles, to Kenosha.

Q. 78 miles to Kenosha?

A. Yes.

Q. Is that the furthest store?

A. Yes, sir.

Q. Do you know the distances for the other stores from Melrose Park, that you have identified on Plaintiff's Exhibit 21?

A. I couldn't recall them exactly from my memory. I would know probably within five or six miles.

Q. You would come within five or six miles of the distance?

A. I would say I could.

Q. And that's about the closest you can come, five or six miles?

A. Without a map, yes, sir.

Q. How did you decide that a store was closest to Melrose and a store was furthest from Melrose?

A. We have figures we actually apply. Our transportation figures on a national basis, and from transportation records furnished to us by truck drivers who take these routes we have been able to measure this distance. That's where I made this.



Q. What store in Group A is furthest from Melrose?

1357 By the Witness:

A. I answered that already. Kenosha, sir.

By Mr. Dunau:

Q. In Group A?

A. Oh, in Group A I wouldn't know for sure. I believe it is either—I wouldn't know for sure.

Q. You don't know. Do you know what store in Group B is closest to Melrose?

A. I believe it is Gary stores.

Q. Do you know the distance between the closest store in Group A and the closest store in Group B to Melrose?

1358 A. I believe it is close.

Q. Do you know the distance?

A. No, sir.

Q. But you believe it is close?

A. Yes, sir.

Q. Do you know the distance from Melrose of the farthest store in the Chicago area which does not sell meat at night?

1359 A. The farthest store from—

By Mr. Dunau:

Q. Melrose.

A. No, sir.

Q. You do not?

1360 A. No, sir.

Q. Did you make any inquiry into it?

A. I don't believe so, sir.

Q. Did you make any inquiry into the distances from Melrose to any of the stores in the Chicago area?

A. I looked at the figures. I didn't do any great analysis with them.

Q. You made no analysis of the distance from Melrose of the stores within the Chicago area, is that what you are saying?

A. No, sir.

Q. That is what you are saying, is that correct?

A. Yes, sir.

Q. Mr. Brodnicki, by what method does the company determine how much to charge for transportation to each individual store?

A. It's a twofold method. First, let me say it attempts to determine—

Mr. Christensen: Mr. Brodnicki, please answer the question.

1361 By the Witness:

A. (Continuing.) By a mileage factor and a quantity factor, and the two factors interrelated to the best of your judgment; in other words, to determine the actual expense we have related what is moved; the volume moved and the distance, and have developed a relationship between the two.

By Mr. Dunau:

Q. Volume moved from what point?

A. There could be two points. One is in Chicago, but the—and primarily Melrose. In other words, the vast majority of our goods are grocery items, and there are some products from Chicago.

Q. What do you mean when you say "There are some products from Chicago?"

A. Our produce items.

Q. They are from sellers in the Chicago area?

A. Well, come from our Chicago warehouse.

Q. And do you have transportation costs which cover transportation of items which do not originate either at

your produce warehouse in Chicago or your warehouse 1362 house in Melrose?

A. Not as such. Those would be covered in the cost of the products, and they would not be isolated.

Q. So that you would have transportation expense reflected which is not listed under transportation charges on your exhibit, Plaintiff's Exhibit 21, is that correct?

A. Well, prior to bringing them into our warehouse somebody would have to pay the railroad fare to get them into that point.

Q. Do you have deliveries of meat to individual stores which never get into your warehouse?

A. Yes, sir.

Q. Do you know what percentage of those deliveries are in relationship to the whole of the delivery of meat to your stores?

A. I wouldn't know that figure.

Q. You would not know?

A. No, sir.

Q. Now, I am not sure I quite understood what method is used in determining transportation charge.

1363 You said you take the volume of goods shipped to a store from a warehouse, is that correct?

A. Based on their sales.

Q. So that the transportation charge would reflect the amount of sales made in that store?

A. Yes, sir.

Q. And the greater the volume of sales, the greater the transportation charge?

A. When tempered by distance, yes.

1364 By Mr. Dunau:

Q. In determining the transportation charge allocated to a store, is the volume of sales in that store an important factor?

Mr. Christensen: I will object to that as already answered.

The Court: He may answer.

By the Witness:

A. It is about half the pie.

By Mr. Dunau:

Q. About half the pie?

A. And distance is the other half.

Q. Now, would you tell me how the company ascertains the advertising charge allocated to each individual store?

A. This is in most cases very close to an actual figure. As an example, in Kenosha, this would be primarily the newspaper coverage in the Kenosha newspapers. And it would have to be divided up among those stores, so that in each case this is determining the advertising coverage in that community or communities, and dividing it 1365 into those stores we feel it benefits.

Q. So if you have a lower volume in a particular store, you might increase your advertising charge in order to increase the volume, is that it?

A. This is—this advertising is fairly consistent. It represents full-page ads primarily, and there is a fairly standard template which is used among the company, and our ads are fairly consistent through the chain.

In other words, we even supply the template or the plate from the Tribune and run the same one in the other newspapers so that this would be relatively standard.

Q. Mr. Brodnicki, opposite 499, Benton Harbor, you have an advertising charge listed of \$28,217.00. Is that an annual charge?

A. Yes, sir.

Q. Does that charge mean that the company is paying a newspaper in the area of Benton Harbor \$28,217.00 for advertising?

A. This can also be made up of—

Q. Answer the question. Is that what it means?

1366 Mr. Christensen: I object to interrupting him. He is endeavoring to tell him what it does mean. The witness should not be interrupted.

The Court: What is the answer?

The Witness: I couldn't answer yes or no. Could you repeat?

It does mean the—\$28,000.00 is primarily newspaper advertising, but there could be a share of radio and TV advertising there, also.

By Mr. Dunau:

Q. Well, then, it would be the cost to the company of advertising on TV, radio and newspapers, within the neighborhood of Benton Harbor, is that it?

A. Yes, sir.

1367 Q. Mr. Brodnicki, is the advertising charge for the stores within the Chicago area in which no fresh meat is sold lower than the advertising charge in other stores because there are more stores within which to divide the charge?

Mr. Christensen: Just a moment, please. May I hear that question?

(Question read.)

By the Witness:

A. In my judgment I would say, yes.

Mr. Dunau: No other questions.

Your Honor, we have no objection to the admission of this document. We think it proves nothing, but we have no objection to its coming into evidence.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT 21.)

1368 Mr. Christensen: Thank you, Mr. Brodnicki.

(Witness excused.)

1369 Mr. Christensen: Mr. Mayer.

THOMAS F. MAYER, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Mr. Mayer, will you please state your full name and address for the record?

A. Thomas F. Mayer; M-a-y-e-r, 8241 South McVicker, Oak Lawn.

Q. Illinois?

A. Illinois.

Q. How old a man are you, Mr. Mayer?

A. 31, sir.

Q. By whom are you employed?

A. Jewel Tea Company.

Q. In what capacity?

A. I am the delicatessen buyer and merchandiser.

1370 Q. How long have you worked for Jewel?

A. Fourteen years, sir.

Q. And what jobs have you held during that 14-year period?

A. I have been strictly a market man. I started out as an apprentice in '49. Went into the Service two years. Started in '51. Returned, became a market manager, market manager for four years, before I was promoted to the job of meat expediter in the Melrose Park office in 1961.

Q. Were you a member of the Amalgamated Meat Cutters Union?

A. I was.

Q. What local did you belong to?



A. 546.

Q. On November 5, 1962, did you make an inspection of certain stores, at the Jewel Food Stores located in the Hammond-Gary area to observe the condition of the meat counters in those stores?

A. I did.

Q. At whose request did you do that?

1371 A. Mr. Brewer.

Q. Did you make notes at the time?

A. I did, sir.

Q. From your notes—without your notes can you recall the precise time of your arrival at each of the stores in that—

A. Fairly well, sir.

Q. Will you tell the Court what stores you visited that evening and approximately the time at which you visited each store, and what you observed as to the condition of the meat counters with respect to quantity of goods displayed and condition of the packaging thereon?

Mr. Dunau: Is this on November 5th, Mr. Christensen?

Mr. Christensen: Yes, sir, 1962.

By the Witness:

A. The first store was 1755 Indianapolis Boulevard in Whiting. I arrived at approximately 6:30, visited the meat counter.

There were six customers in the store. One was 1372 at the meat counter.

I approached this woman and asked her if—

Q. Well, you will not be permitted to tell about your conversation with a customer.

A. I found a very, very good display of meat. The counter was orderly and there was an exceptionally good variety of meat in the counter.

I stayed in the store approximately seven minutes, at

which time I proceeded to 6933 Indianapolis Boulevard in Hammond.

I arrived there approximately 7:05. There were eight customers in this store, if I remember correctly. The counter was also in very good condition. Packages were very orderly and had very, very good variety.

I stayed approximately the same amount of time in that store, at which time I proceeded to 4569 Broadway, in Gary, and went to the meat counter.

1373 There were three customers in the store, this particular store. The counter likewise was very orderly and a full display of meat.

I then proceeded to 661 Main Street in Hobart, and observed the same condition in that store.

1374 By Mr. Christensen:

Q. Now, these times are evening times, are they not?

A. That is correct, sir.

Q. Was there a butcher on duty in any one of those four stores?

A. No, sir, there was not.

Q. Did you observe any torn packages in any of those meat counters that evening?

A. None, sir.

Q. Did you observe any discolored or spoiled meat in any of those counters?

A. No, sir.

Q. Mr. Mayer, does Jewel have a system known as coding of meats?

A. Yes, they do, sir.

Q. Now, in your parlance, what does that term "coding" mean as you use it?

A. A code is an expiration code that is put on every package of fresh meat that goes into our counters after processing, after wrapping.

Q. And of poultry, also?

A. Of poultry, also, sir.

1375 Q. And what does the code signify or mean?

A. The code signifies that on the expiration date this product must be removed from the counter, examined, and if, at the market manager's discretion or some other responsible party, it is still salable in its exact form or in a reprocessed form, this is exactly done to the meat. It is repackaged, repriced, and put out for sale.

Q. Now, apart from any problems of spoilage in the pre-packaged sale of meat, there are reasons for repackaging meat after it has been in one of these pasteboard containers for a day or two?

A. Yes, sir.

Q. What are those reasons?

A. Excessive leaking, or as we call it, bleeding of a particular product.

Q. Well, the paper tends to absorb either blood or moisture from the meat?

A. That is correct.

Q. That is, the paper of the container?

A. Correct.

Q. And if it is one or two or three ounces—

1376 A. That is correct.

Q. (Continuing.) —the customer would get, to that degree, shorted on weight?

A. Right.

Q. And these are permissible limits that are set up, so that, although the meat is perfectly salable and edible, there may have been some shrinkage in the meat, itself, is that correct?

A. That's right.

Q. Now, with respect to the pre-packaged system of selling, is poultry by and large—is there any difference in the problems of wrapping poultry from the problems of wrapping meat?

A. Yes, sir.

With respect to this heavy bleeding, as I have stated previously, poultry can lose a lot of its moisture in a very short period of time. At the end of every day our poultry at Jewel has to be taken out of the counter, re-wrapped and reweighed.

Q. These nights you saw no torn packages in any of these meat counters?

A. That is correct.

1377 Q. In general, is the tearing of the cellophane, or whatever this material is around the packages, a problem of any substance in the pre-package system of sale of meats within your coding system?

A. No, sir.

1378 Q. During the time you have been permitted to sell fresh poultry at night, have you encountered any merchandising problems with it that are not common in the daytime?

A. None, sir.

Q. In your judgment if it has proved feasible and successful to sell prepackaged poultry at night, is there any faint reason why the same couldn't be done with red meat?

A. No, sir.

1379 EDWARD D. HANKS, having been first duly sworn, deposeth and saith as follows:

*Direct Examination by Mr. Christensen.*

Q. Mr. Hanks, will you state your full name and address for the record?

A. Edward D. Hanks, 3312 North Drive, Highland, Indiana.

Q. By whom are you employed?

A. Jewel Tea Company.

Q. How long have you been employed by Jewel?

A. Nine years.

Q. In what capacity?

A. I'm a meat market manager at the moment.

Q. And in November, 1962, this month; what market were you employed at?

A. 1755 Indianapolis Boulevard, Whiting.

Q. Now on Tuesday, November 6, did you work at that store?

A. No, sir.

1380 Q. That was my day off.

Q. Were you requested on the 8th or 9th or thereabouts some time, to furnish us with information as to when meat in the meat counter at that store had been coded, put in the counters and taken out?

A. Yes, sir.

Q. What is the fact with respect to the chop suey meat that was in that store on Tuesday, the 6th, with respect to its coding?

A. Well, the chop suey meat in question was processed on the previous Saturday.

Q. Saturday, November 3rd?

A. Yes, and it was taken out of the counter Saturday night at the close of business. We were closed Sunday. Monday morning it was unwrapped and checked for freshness and re-wrapped, priced, and put back on sale Monday morning.

The expiration code was Wednesday of that week.

Q. Were you there on Wednesday, November 7th?

A. In the afternoon I was there, yes, sir.

Q. And was all the meat taken out within its  
1381 coding dates, so far as you know?

A. Yes, sir.

Q. In the entire period between Saturday the 3rd, and Wednesday the 7th?

A. Yes, sir.

Mr. Christensen: You may cross-examine.

Mr. Dunau: No questions.

(Witness excused.)

1382 GEORGE D. KOLIAS, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name and address?

A. George D. Kolas, 115 East 118th Place, Chicago, Illinois.

Q. How old a man are you?

A. Forty-two.

Q. By whom are you employed?

A. Jewel Tea Company.

Q. How long have you worked for Jewel?

A. Eight years.

Q. In what capacity?

A. As a meat cutter and as assistant market manager, as of now.

Q. Are you a member of the Amalgamated Meat Cutters?

A. Yes, I am.

Q. What local?

A. 350.

Q. And that has jurisdiction out in—

1383 A. Indiana.

Q. Out in the Northern Indiana area, does it not?

A. Yes, sir.

Q. What store were you working in this month of November, 1962?



A. 1755 Indianapolis Boulevard.

Q. Were you on duty on Tuesday, November 6th?

A. Yes, sir.

Q. Did you inspect the meat counter before you quit work at 6:00 o'clock that night?

A. Yes, sir.

Q. Was there any spoiled meat in that meat counter, chop suey meat, or otherwise?

A. No, sir.

Q. Did you work on Wednesday morning, the 7th of November?

A. Yes, sir.

Q. At that time was the chop suey meat re-wrapped?

A. Yes, sir. It was taken out of the counter and re-processed.

Q. Was it spoiled?

1384 A. No, sir.

Mr. Christensen: You may cross-examine.

*Cross-Examination by Mr. Dunau.*

Q. Mr. Koliass, do you know whether any of the chop suey meat in the counter at 6:00 P.M. on Tuesday night when you left was sold between 6:00 P.M. and 9:00 P.M. that night?

A. I couldn't say.

Mr. Dunau: No other questions.

Mr. Christensen: That's all. Thank you.

(Witness excused.)

Mr. Christensen: Mr. Cantrell, will you take the stand, please?

1385 CHARLES A. CANTRELL, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name and address for the record?

A. Charles A. Cantrell.

Q. Where do you live, sir?

A. 3947 Grove Avenue in Western Springs, Illinois.

Q. By whom are you employed?

A. Jewel Tea Company.

Q. In what capacity?

A. Division Manager. Market Division Manager.

Q. We laymen would say meat market department?

A. Well, yes. In the market operation.

Q. Yes. How long have you been employed by Jewel?

A. Five years.

Q. Before that, by whom were you employed?

A. I was with the Eisner Grocery Company for five years in Champaign, Illinois.

1386 Q. All right.

Now, after Jewel acquired Eisner you ultimately came up here to Chicago, is that correct?

A. That is right.

Q. When did you come to Chicago?

A. In August of 1958.

Q. In what capacity?

A. As an operating manager, division operating manager.

Q. In due course of time, did you become acquainted with a market manager by the name of Walter Santeler?

A. I did.

Q. Who was working in markets in the Rockford area?

A. That is right.

Q. Did you find occasion to talk with Santeler about the adequacy of his performance as a market manager?

A. I did.

Mr. Christensen: Mark this Plaintiff's Exhibit 22 for identification.

(Said document was marked Plaintiff's Exhibit 22, for identification.)

1387 By Mr. Christensen:

Q. I show you a document marked Plaintiff's Exhibit 22 for identification, and ask you if that bears your signature and Mr. Santeler's signature?

A. It does.

Q. Please state the circumstances surrounding the preparation and signature of that document?

A. Before this document was written I had occasion to believe that Mr. Santeler was not living up to Jewel Tea policies in the grinding of meat.

There had been a rumor that he was using beef hearts and beef tongues in ground hamburger, which is strictly against Jewel policy.

In checking his orders, I found that his orders did not compare with another market similar to his for the amount of beef hearts and beef tongues, so I became suspicious that this rumor was correct and I went out to talk to Mr. Santeler.

He agreed that he had been doing this. He admitted it.

I asked him at the time if he had not signed our ham-  
1388 burger memorandum that the company gets out for all managers that hamburger will not be adulterated in any manner or form, that it is to be strictly beef and it is supposed to be fresh ground meat, ground trimmings.

He said that he had. He had no excuse for this, so a day or two later, after talking to him, I dictated this letter and

took it out and had him sign it and put it in his personnel file.

Q. Did he sign that in your presence?

A. He signed it in my presence.

Q. And did you discuss with him that he was not performing properly, both with respect to leaving out of coded products in his case and this adulteration of product?

A. I did.

Q. Was Mr. Santeler in debt to the Jewel Tea Company in 1959 and 1960?

A. I wouldn't say he was in debt. He borrowed money on his Jewel Retirement Plan.

Q. He signed a note for that, didn't he?

A. He signed a note for it.

1389 Q. Had he also purchased a home?

A. Yes, he had.

Q. To your knowledge?

A. Yes.

Q. On which he had outstanding a large mortgage?

A. Yes.

Q. There is a system on which the Jewel retirement operates.

Can an employee get his or her vested interest out of the plan, save by retiring or quitting?

A. Yes.

Q. They can get it out—

A. They can get it out by retiring or quitting.

Q. Yes, that's the only way you can get it?

A. That is right.

1390 By Mr. Christensen:

Q. I show you a document marked Plaintiff's Exhibit 23 for identification, and ask you if that is a copy of a record from the permanent personnel file showing Mr.

Santeler's status in the Jewel estate's retirement program as of May 23, 1961?

A. That is right.

Q. And when he, Mr. Santeler, quit, he got \$9,035.06, which he was at liberty to apply against his mortgage or against any purpose that he wished to, was he not?

A. This was his money.

Mr. Christensen: I will offer the two documents in evidence, if it please the Court.

Mr. Dunau: No objection.

The Court: They may be admitted.

(Said documents, so offered and received in evidence, were marked PLAINTIFF'S EXHIBITS 22 and 23.)

1391 Mr. Christensen: You may cross examine.

Mr. Dunau: No questions.

Mr. Christensen: Thank you.

(Witness excused.)

1392 EDWARD T. VORBECK, having been previously duly sworn, deposeth and saith further as follows:

*Direct Examination by Mr. Christensen (Continued).*

Q. You are the same Edward T. Vorbeck previously sworn here and who testified, are you not?

A. I am.

Q. During the 1957 negotiations, did there come a time in which there was a discussion or a conversation in which you participated or heard in which Mr. Kelly made a statement as to the desirability or non-desirability of time and a half after forty hours for butchers?

A. Yes, sir.

Q. Will you please state what that discussion was and the circumstances under which it took place?

Mr. Dunau: Would you identify when, please?

By Mr. Christensen :

Q. Yes, when?

A. The discussion occurred on the afternoon of 1393 November 1, 1957. It followed the presentation of a fifteen point proposal by the union in which it was introduced by stating that they would submit the Jewel proposal without recommendation.

Then, at the conclusion of the fifteen point proposal, which was submitted basically for the consideration of the industry, there was an indication that the union considered the Jewel proposal non-livable.

As the result of this comment, Mr. Morris and I asked for a conference with the sub-committee of the union. The sub-committee was Mr. Kelly, and Mr. Neilubowski. We then asked them what conditions were non-livable in the Jewel proposal, wasn't our wage proposal a satisfactory one.

Mr. Kelly indicated it was a substantial wage proposal, but that in his opinion two proposals in that were not livable. The two conditions were the requirement or the proposal at a classification for female wrappers was ordered to the wage or labor classifications in the contract, and secondly, that it provided for no time and a half after 6:00 o'clock.

1394 At this point Mr. Neilubowski interjected that it also did not provide for time and a half after forty. Mr. Kelly corrected him and said, "I don't believe that its—we are interested in time and a half after forty."

The fact is that the proposal of the entire industry did not ask for time and a half after forty, it asked for time and one-fourth.

He stated the example of the construction industry in which he had observed people—where the time and a half after forty is in existence—where he had observed or knew the practice to be that men would come back and work for



their own employer at straight time when they wouldn't have been employed at time and a half.

I don't know that he used the word "scabbing" but that was the effect of it.

Mr. Christensen: You may cross examine.

Mr. Dunau: No questions.

Mr. Christensen: That's all, thank you.

(Witness excused.)

1396 Mr. Christensen: Plaintiff rests, your Honor.  
Whereupon the plaintiff rested its case in rebuttal.

1398 (Which were all of the proceedings had and evidence offered and received on the trial of the above-entitled cause.)

1399 IN THE UNITED STATES DISTRICT COURT.  
• • (Caption—58-C-1415) • •

### CERTIFICATE.

I hereby certify that the above and foregoing transcript, Pages Nos. 1 to 1398, inclusive, is a true and accurate transcript of the original shorthand notes taken upon the trial in the above-entitled cause, on October 24, 25, 26, 30, 1962, and November 2, 5, 7, 8, 28 and 29, 1962.

Paul A. Ruhl,  
*Official Court Reporter,  
United States District Court.*

Dated: October 29, 1962.

117      IN THE UNITED STATES DISTRICT COURT.

• •      (Caption—58-C-1415)      • •

**JUDGMENT.**

The above entitled action having been tried by the Court without a jury, and the Court, having heard all of Plaintiff's evidence, now makes the following findings of fact:

**Findings of Fact.**

1. Plaintiff grounds its action on 15 U. S. C., Sec. 15, which provides: "Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold damages by him sustained, and the cost of suit, including a reasonable attorney's fee."
- 118 2. Plaintiff has clearly established existence of Union Contracts under which Plaintiff is prevented from selling meat and meat products before 9:00 A. M. or after 6:00 P. M., Mondays through Saturdays, in its Chicago area stores. Moreover, such meats, if Plaintiff were permitted so to do, would be sold pre-packaged via a self-service system.
3. The Defendant Associated Food Retailers of Greater Chicago, Inc. is a trade association consisting of various individual or independent food stores engaged in the retail sale of meats for human consumption in the Greater Chicago area.
4. The Defendant, Charles H. Bromann is the Secretary and Treasurer of the aforesaid trade association. Said Defendant Charles H. Bromann con-

- 119 ducts collective bargaining for and on behalf of the aforesaid trade association, which association enjoys the industry-wide contract. ③
5. From 1957 Plaintiff sought exclusion of the restriction on night sales from the industry-wide contract, and the Defendant Local Unions resisted such exclusion. The rest of the Industry agreed with the Defendant Local Unions to continue the ban on night operations.
6. The testimony of R. Emmett Kelly, assistant business representative for Defendant Local Union 546, indicates Union activity and is devoid of any significant mention of Defendants Charles H. Bromann or Associated Food Retailers of Greater Chicago, Inc.
7. There is no evidence in the record showing that there is or was any conspiracy among and between Defendants Charles H. Bromann, Associated Food Retailers of Greater Chicago, Inc. and the Defendant Local Unions.
- 120 8. There is no evidence in the record tying in Charles H. Bromann or Associated Food Retailers of Greater Chicago, Inc. as conspirators in any manner whatsoever.
9. After Plaintiff completed the presentation of its evidence, the Defendants, Charles H. Bromann and Associated Food Retailers of Greater Chicago, Inc., moved to dismiss this action pursuant to Rule 41 (b) of the Federal Rules of Civil Procedure.
10. The Court has expressly determined, in accordance with Rule 54 of the Federal Rules of Civil Procedure that there is no just reason to delay the direction of the entry of a final Judgment as to one or more, but fewer than all, of the parties involved in this action.

From the foregoing facts shown by the pleadings, or embraced within stipulations or agreements of the respective parties to this action, and upon the evidence adduced before the Court herein, the Court concludes as a matter of law:

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*Conclusions of Law.*

1. Since the gist of the Complaint against Defendants Charles H. Bromann and Associated Food Retailers of Greater Chicago, Inc. is conspiracy, Plaintiff has failed to prove any cause of action whatsoever against said Defendants Charles H. Bromann and/or Associated Food Retailers of Greater Chicago, Inc.
2. Plaintiff has shown no right to any relief whatsoever against Defendants Charles H. Bromann and/or Associated Food Retailers of Greater Chicago, Inc.

*Direction for Entry of Judgment.*

It is, therefore, ordered and adjudged that the motion of Defendants Charles H. Bromann and Associated Food Retailers of Greater Chicago, Inc. to dismiss this action be, and it is hereby allowed, and the Court having found no just reason to delay the direction of the entry of a final Judgment as to one or more, but fewer than all, of the parties involved in this action, therefore said Defendants Charles

H. Bromann and Associated Food Retailers of Greater  
122 Chicago, Inc. are hereby forthwith dismissed from this  
action. Costs shall be allowed to said Defendants.

Entry of final Judgment in accordance with the foregoing is hereby directed.

/s/ WALTER J. LA BUY,

*U. S. District Judge.*

Dated: November 28, 1962.

IN THE UNITED STATES DISTRICT COURT  
For the Northern District of Illinois,  
Eastern Division.

Jewel Tea Co., Inc.,

v.

Local Unions Nos. 189, 262, 320,  
546, 547, 571 and 638 Amalga-  
mated Meat Cutters and Butch-  
er Workmen of North America,  
AFL-CIO, Charles H. Bromann,  
Associated Food Retailers of  
Greater Chicago, Inc., et al.

No. 58 C 1415

NOTICE OF APPEAL TO THE COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT.

Clerk, United States District Court  
United States Court House  
Chicago, Illinois

Notice is given that plaintiff, Jewel Tea Co., Inc., hereby  
appeals to the United States Court of Appeals for the  
Seventh Circuit from the Judgment entered in this action  
on November 28, 1962, wherein the cause was dismissed  
as to defendants Charles H. Bromann and Associated Food  
Retailers of Greater Chicago, Inc.

/s/ George B. Christensen,

/s/ Fred H. Daugherty,

Attorneys for Jewel Tea Co., Inc.

Winston, Strawn, Smith & Patterson,  
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## Attorneys for Defendants are:

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IN THE UNITED STATES DISTRICT COURT.

\* \* (Caption—58-C-1415) \* \*

## MEMORANDUM.

Plaintiff Jewel Tea Company seeks a declaratory judgment, injunctive relief and treble damages under the anti-trust laws, charging that the defendant unions and the Associated Food Retailers of Greater Chicago, Inc., an association of independent retail stores, conspired to suppress competition among retail meat markets in the Chicago area by limiting the marketing hours for the sale of fresh meat. The sufficiency of the complaint was sustained by this court and affirmed by the Court of Appeals on an interlocutory appeal. (*Jewel Tea Co. v. Local Unions, et al.*, 274 F. 2d 271 (7th Cir. 1960).) The cause was remanded and tried by this court without a jury.

At the close of plaintiff's case this court allowed the mo-



tion to dismiss of defendants Bromann and Associated on the ground that there was no evidence showing that either or both of these defendants conspired with the defendant union in forcing the restrictive provision upon plaintiff.

Since plaintiff sought relief from the defendant unions 187 apart from the theory of conspiracy, the unions' motion to dismiss was denied. The court must now determine, on the basis of the entire record, whether the provision limiting marketing hours for the sale of fresh meat in the collective bargaining agreement between the defendant unions, plaintiff and other employers violated the anti-trust laws, and entitled plaintiff to the relief demanded.

This issue was not and could not have been previously determined by this court or by the Court of Appeals in the proceedings evaluating the pleadings. It was not possible at the pleading stage to determine whether the challenged provision was the means of effectuating a conspiracy, or was a part of the conditions of employment. In affirming the sufficiency of the complaint, the Court of Appeals predicated its decision in part on the proper assumption of the existence of the alleged conspiracy between the unions and non-labor groups, and in part on the necessity of a trial to ascertain whether the restraint was unreasonable. (274 F. 2d 221, 222, 223.)

The adjudication of the issue now before the court necessitates a review of the purport, history and effect of the marketing hour restriction in the collective bargaining agreement. The uncontroverted evidence shows that the limitation upon market operating hours originated after the butchers strike of 1919 in opposition to the prevailing 81 hour, 7 day work week. The ensuing 1920 collective bargaining agreement governing Meat Cutters imposed limitations on hours of labor and upon marketing hours. It provided:

"Article 1—Nine hours shall constitute the basic working day, hours shall be 8 A. M. to 6 P. M., excepting Saturdays and days preceding holidays beginning at 8 A. M. and quitting at 9 p.m., allowing 1 hour for dinner and one-half hour for supper. Employees must be dressed and ready for work at 8 A. M.

188 "Article 2—It is expressly understood *that no customers will be served who come into the market after 6 P. M. and 9 P. M. on Saturdays and on days preceding holidays*, that all customers in the shop at the closing hour be served, that all meats be properly taken care of and markets placed in a sanitary condition, such work not to be construed as overtime. Overtime to be limited to 1 hour every day and *shall be performed behind locked doors*.

"Article 3—There shall be no work on Sundays, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day or New Year's Day." (Emphasis added.)

The hours established by the 1919 strike continued until 1937, when the Saturday work hours and marketing hours were reduced and set at 8:30 A. M. to 7 P. M. Further modifications of working hours and correlative marketing hours were made in 1941, 1945, 1946 and in 1947, when they were set at 9 A. M. to 6 P. M. Monday through Saturday, with marketing hours no later than 6 P. M. The hours thus established have continued to the present. These changes, taken from agreements of Local 546, were followed in the agreements of all the defendant unions, except Local 189, which executes a separate agreement to meet conditions peculiar to it.

From the inception of plaintiff's operation of meat markets in the Chicago area in 1933, it entered agreements with the defendant unions containing these marketing hour restrictions, which were identical to agreements made with other meat market employers in the Chicago area.

The current collective bargaining agreement includes a

"Service Contract" applicable to service meat markets, and a "Self-Service Contract" applicable to self-service meat markets. This differentiation began in December 1952, on the advent of the self-service mode of vending meat in this area. These contracts recognize the union as the exclusive bargaining representative of all employees in the meat department who process, wrap, handle and sell frozen and fresh meats on the employer's premises.

189 With minor exceptions, the contracts require that the work entailed in the preparation and sale of meat, including the replenishment of stock and cleaning of counters shall be performed exclusively by the meat department employees represented by defendant unions. Both contracts provide that 8 hours shall constitute the basic work day, which shall begin no earlier than 8 A.M. and end no later than 6 P.M. They provide also that "at the employer's discretion overtime at overtime rates may be worked after 8 hours in any one day and behind locked doors after 6 P.M." They further specify that "market operating hours shall be 9 A.M. to 6 P.M. Monday through Saturday," and that no customer shall be served who comes into the market before or after these hours. The contracts do authorize the sale after 6 P.M. of certain products other than fresh meat.

The collective bargaining agreement also provides that the unions agree not to enter into a contract with any other employer designating lower wages, or longer hours, or any more favorable conditions of employment.

Similar contract provisions, or with variants for a single night operation, are in operation in other metropolitan areas.

The record sets forth in detail the method of bargaining between the employer group and the union group, followed since 1941, and the negotiations relative to the 1957, 1959 and 1961 contracts. Each group formulates its position

independently. The union's demands are based on a preliminary survey of members, who are consulted in the course of negotiation and must ratify any agreement; and the employers meet in advance of negotiations to explore their objectives, and caucus periodically to determine their bargaining position.

190. On July 25, 1957, the defendant unions gave notice of their desire to negotiate the new contract. They presented their demands to the employer group on August 20. On August 9 plaintiff's principal negotiator, E. T. Vorbeck, and representatives of various chain stores formulated 6 employer demands for negotiation: night openings, female wrappers, automatic wrapping machines, flexible work day, right to pre-price off premises, and the right to sell fresh frozen meats. On August 30, Vorbeck apprised Carl H. Bromann, Secretary of Associated, who had acted as chairman for the entire employer group in 1950, of the demands of the chain stores and of the scheduled meeting with the unions on September 5. On that date the union representatives met and exchanged demands with the representatives of the employer group, including plaintiff, National Tea, Associated, Hillmans, High-Low, Krogers, A&P, Piggly Wiggly, Goldblatts, Wieboldts, Save-Way, Del Farm, Sure-Save and I.G.A. Substantially the same group of employers continued to meet with the unions through the 1957 negotiations.

It would serve no useful purpose and would unduly prolong this opinion to detail the proposals and counter-proposals made at the numerous meetings that followed. Suffice to note they indicated that the unions from the outset did not want night work; and that the employers' demand for night operating hours were intertwined with the extension of working hours and the "flexible day," which meant starting later and working nights, as well as with various wage premiums "to sell" night work.

Typical of the negotiations is the all-employer proposal of November 15, 1957, which stipulated for Friday night operations, with a male employee on duty during marketing hours and extended the work day on Friday between 191 8 A. M. and 9 P. M. Not only did Associated join in this proposal, but at a subcommittee meeting prior to its introduction Bromann personally requested R. Emmett Kelly, the union representative, to agree to night marketing operations.

The record also shows that plaintiff, who threatened to sue as a co-conspirator any employer who opposed night marketing operations, offered at the close of the 1957 negotiations to give up that demand if the unions would agree to female wrappers. No such alternative concession was made by National Tea Co. The union, however, refused to accept either night operations or female wrappers, and ratified a contract without those provisions, notwithstanding plaintiff's threatened litigation. Moreover, Local 546, by secret ballot, authorized a strike if necessary to avoid night operations, by a vote of 2,253 in favor to 98 against. The employers signed the collective bargaining agreement with the restriction, and plaintiff alone immediately instituted these proceedings.

During the 1959 negotiations the union group was willing to bargain on night marketing hours. However, in the absence of agreement on a sufficient wage incentive, the final contract retained the restriction, but eliminated payment of time-and-a-half for work between 8 A. M. and 9 A. M., and granted the employer group a limited flexible day.

In the 1961 negotiations the employer demands for night marketing operations were again intertwined with night working hours and wage incentives for night work. The all-employer proposal of September 12, drafted by plaintiff, committed market operating hours to the unlimited dis-



cretion of the employer, and provided for employees to be "scheduled" to work after 6 P. M. It also established a "supper period" to end no later than 8 P. M., and stipulated that "hours and days to be worked by each employee shall be determined by the employer," and that all employees may be required to work overtime.

Similarly, plaintiff's proposal number 2 of November 13 also contemplated night operations and stipulated that a journeyman be on duty during all hours that fresh meat is offered for sale between 9 A. M. and 9 P. M. Monday, Thursday and Friday, and as needed after 6 P. M. on Tuesday, Wednesday, Saturday and Sunday. Only one proposal was ever made by plaintiff in the course of the prolonged negotiations on all three contracts, which suggested night operations without butchers on duty, and that was submitted to the unions at the end of the day as negotiations were "breaking up" on November 16, 1961.

Defendant unions questioned the seriousness of that proposal under the circumstances. They also presented evidence that a self-service meat market cannot operate at night without employees on duty to rearrange and replenish stock in the counters, and give customers necessary personal attention. They showed that in most of plaintiff's stores outside Chicago, where night operations exist, meat cutters are on duty whenever a meat department is open after 6 P. M., and that plaintiff has extended market operations in a substantial number of stores to 11 P. M. for 6 nights a week and on Sundays. Even in self-service departments, ostensibly operated without employees on duty after 6 P. M., there was evidence that requisite customer services in connection with meat sales were performed by grocery clerks. In the same vein, defendants adduced evidence that in the sale of delicatessen items, which could be made after 6 P. M. from self-service cases under the contract, "practically" always during the time the market



was open the manager, or other employees, would be rearranging and restocking the cases. There was also evidence that even if it were practical to operate a self-service meat market after 6 P. M. without employees, the night operations would add to the workload in getting the meats prepared for night sales and in putting the counters in order the next day.

The record also showed that plaintiff differed with all the other employers by insisting that the health and welfare plan should not be cost free to the employees, and would not assent to the industry settlement until January 2, 1962.

Plaintiff adduced testimony of numerous witnesses that they were inconvenienced by the restriction on night sales of fresh meat, and would buy more meat if night hours were available. Some 11 butchers testified that they would be willing to work at night. There is also evidence that plaintiff's meat cutters voted 759 to 28 against night work in a mail ballot.

Defendants submitted a Department of Agriculture survey of food consumption showing that the amount of meat purchased is dictated by income. They also presented a study compiled by the Bureau of Labor Statistics respecting average consumer expenditure for meat, which indicated that Chicago, where night sales of meat were restricted, ranked 4th of 49 large cities in total meat expenditures; and of 11 cities with a population of over one million, Chicago ranked 3rd for all meat sales, and highest for pork sales. Of the 11 cities, Cleveland, where night sales were also restricted, stood 2nd highest in expenditures for all meat, and 2nd highest for beef sales. Defendant submitted these statistics to show that night marketing 194 hours have no effect on the amount of meat purchased.

To establish damages resulting from the limitation on marketing hours, plaintiff introduced a study made by one of its employee accountants of differences in 9 store

earnings the year before and the year after night meat operations were authorized. The study purported to show that the increase in earnings was due to the evening marketing hours for meat. Defendants attacked the validity of the study on numerous grounds. The study, made by an employee who had only a single half-semester course in statistics, failed to take account of certain economic variables affecting sales and profits; the study erroneously included one store in which no change in hours occurred; a decrease in sales and earnings occurred in two stores; and the increase in earnings in another store was identical with the average increase in earnings for the same period in stores in which there were no night operations.

It is within this factual framework that the restriction in the collective bargaining agreement must be viewed in determining whether it violates the anti-trust laws.

Section 1 of the Sherman Act makes illegal any contract, combination or conspiracy in restraint of trade among the several states. (15 U.S.C.A. 1.) Where labor union activities are involved, this section must be considered jointly with section 20 of the Clayton Act and the Norris-La-Guardia Acts. (15 U.S.C.A., § 12-17; 29 U.S.C.A. 101-115; *U. S. v. Hutcheson*, 312 U. S. 219, 231.) These "interlacing statutes" declare two congressional policies: "to preserve a competitive economy," and "to preserve the rights of labor to better its conditions through collective bargaining." (*Allen-Bradley Co. v. Union*, 325 U. S. 797, 807.) In reconciling these policies the Supreme Court has held that

195 there was no congressional intent to bestow a blanket of immunity upon labor unions if they combined with non-labor groups to create business monopolies and fix prices. (*Allen-Bradley Co. v. Union*, *supra*, at p. 807; *United Brotherhood of Carpenters v. U. S.*, 330 U. S. 395, 398; *U. S. v. Women's Sportswear Assoc.*, 336 U. S. 460, 463.) As the U. S. Supreme Court adroitly stated in the

Women's Sportswear case, "benefits to organized labor cannot be utilized as a 'cat's paw' to pull employer's chestnuts out of the anti-trust fires."

Although plaintiff initially contended, and still asserts that the defendants conspired with Associated, a non-labor group, to suppress competition by the market operating restriction on the sale of fresh meat before 9 A.M. or after 6 P.M. Monday through Saturday, and that the unions acted as the enforcing agents of the conspiracy, this theory failed to withstand the "crucible of trial." As previously noted, at the close of plaintiff's case, this court allowed a motion to dismiss Associated and Bromann from the cause since the record was devoid of any evidence to support a finding of conspiracy.

The record showed only that Bromann, on behalf of Associated, which represented some 1000 individual and independent food stores, dealt with the unions at arm's length. At no time did he receive a direction to demand a 6 P.M. closing; nor did he make any such demand. On the contrary, Associated, through Bromann, joined in the all-employer offer of November 15, 1957, demanding the elimination of the restriction on night marketing, and specifically requested that change from the union representative at a sub-committee meeting. Even Vorbeck's letter of October 1, 1961; to his company, stated that Associated did not oppose night work, but that some opposition came from other chains. This fluctuating opposition by some 196 employers to night operations because of their high cost is hardly tantamount to a conspiracy with the unions. Hence, any attempt to reassert that theory must fail.

In determining whether the contract itself, apart from any theory of conspiracy, violated the Sherman Act, there is some merit to defendants' procedural objection that the case, after the dismissal of Bromann and Associated,

should not have proceeded forward on a different basis from that alleged in the complaint, as sustained by the Court of Appeals. However, it is preferable to dispose of the case on the merits, rather than on technical or procedural grounds. (*Adams Dairy Co. v. St. Louis Dairy Co.*, 260 F. 2d 46, 52 (1958).)

The mere fact that a collective bargaining agreement is entered between the employers of an industry and the union does not automatically offend the Sherman Act. (*Allen-Bradley Co. v. Union*, *supra*, at p. 809.) There is no "litmus paper" test to determine whether a particular bargaining provision is within the labor exemption, or is in derogation of the anti-trust laws. Courts have emphasized such factors as whether the provision originated with labor or with the non-labor group (*U. S. v. Women's Sportswear Assoc.*, 336 U. S. 460); whether its purport was essentially to benefit the union in its legitimate objectives (*Phil. Rec. Co. v. Mfg. Eng'r Assoc.*, 155 F. 2d 799; *Schatte v. Int. Alliance*, 182 F. 2d 158); whether it was imposed by the union after arm's length negotiation (*U. S. v. Milk Driver's Union*, 153 F. Supp. 803, 806; *Adams Dairy Co. v. St. Louis Dairy Co.*, *supra*, at p. 54); and whether it effectuated results prohibited by the Sherman Act, such as price fixing or the elimination of competition (*U. S. v. Plasterer's Assoc.*, 347 U. S. 186; *U. S. v. Gasoline Retailer's Assoc.*, 285 F. 2d 688; *United 197 Brotherhood of Carpenters v. U. S.*, 330 U. S. 395).

The record before this court shows that the marketing hour restriction originated as a result of the union's strike against the 81 hour, 7 day work week in 1919, long before plaintiff sold meat or Associated was organized. It was inserted in the collective bargaining agreement in juxtaposition to, and as an implementation of, the Article specifying hours of work for butchers. In fact, through the years each change in hours of labor brought a corre-

sponding change in market operating hours, until night work was finally eliminated in the Chicago area in 1947. Lifting the restriction on marketing hours would mean a return to longer hours and night work. This is evident from the face of the employer proposals, which included the "flexible day," night hours, and wage premiums "to sell" night work, and from the practices of the trade, particularly in plaintiff's stores where night sales of fresh meat were authorized.

Moreover, even the single offer made by plaintiff at the close of negotiations in 1961 for night operating hours without night work for butchers in the self-service markets was contrary to the union's self interest. It meant that their work would be done by others unskilled in the trade, since the evidence showed that in stores where meat is sold at night it is impractical to operate without either butchers or other employees. Someone must arrange, replenish and clean the counters and supply customer services. In addition, that proposal would involve an increase in workload in preparing for the night work and cleaning the next morning.

Thus, the unions' insistence on the retention of the marketing hour restriction was based upon its desire to protect its right not to work at night, and to protect its work from being taken by others. Those facts and circumstances are inimicable to plaintiff's theory that the unions insisted on the restriction as the tool of the employer group and at their behest. On the contrary, the evidence established that the restriction was imposed after arm's length bargaining, including an overwhelming strike vote against night work, and was fashioned exclusively by the unions to serve their own interests—how long and what hours members shall work, what work they shall do, and what pay they shall receive. These are not objects which the anti-trust laws proscribe. They are conditions of em-



ployment, and as such are clearly within the labor exemption of the Sherman Act. (*Adams Dairy Co. v. St. Louis Dairy Co.*, 260 F. 2d 46; *Telegraphers v. Chi. & N. W. R. Co.*, 362 U. S. 330; *Hunt v. Crumbach*, 325 U. S. 821; *U. S. v. Musician's Fed.*, 47 F. Supp. 304, aff'd 311 U. S. 741; *U. S. v. Hutcheson*, 312 U. S. 219.)

Under this analysis the case of *Allen-Bradley Co. v. Union*, 325 U. S. 797, relied upon by plaintiff, cannot be deemed determinative, since the collective bargaining agreement there looked, not to the terms and conditions of employment, but to price and market control. Certain contractors, manufacturers and unions combined through the medium of collective bargaining agreements to prevent out-of-state electrical equipment from being used locally. Under closed shop agreements the contractors were obliged to purchase equipment solely from local manufacturers, who had closed shop agreements with the union, and the manufacturers were obliged to confine their New York City sales to contractors employing union members. The plan resulted in a protected city market, whereby identical goods were sold at higher prices within the city than 199 outside of it. The court held that although the union

benefited by higher wages from the plan, this was no mere labor dispute, but rather a combination to monopolize trade, control its price and discriminate between customers in violation of the Sherman Act.

Nor does this court find persuasive other cases where the objective and effect of the collective bargaining agreement was to fix prices and control markets. (*United Brotherhood of Carpenters v. U. S.*, 330 U. S. 395; *U. S. v. Women's Sportswear Assoc.*, 336 U. S. 460; *U. S. v. Milk Drivers' Union*, 153 F. Supp. 803; *Phil. Record Co. v. Mfg. Eng'r Assoc.*, 155 F. 2d 799.)

Analogy may be made more appropriately to the *Adams Dairy* case. (*Adams Dairy Co. v. St. Louis Dairy Co.*,



260 F. 2d 46.) Complaint was made there by one dairy that an industry-wide labor contract between the union and other dairies contained a provision raising commissions for longer runs under a point system, which, plaintiff claimed, adversely affected its costs and compelled it to lose its competitive position in violation of the Sherman Act. As in the instant case, the smaller dairies who were made defendants insisted that the contract was negotiated at arm's length; and the unions asserted that they were proceeding in self interest in raising rates for longer runs for this would ease the heavy loads which were damaging to the health of the drivers, and would encourage route splitting, thereby creating more jobs.

The jury found that there was no conspiracy between the union and non-labor groups, and, on review, the court was required to determine, as in the case at bar, whether the contract in and of itself was illegal. In so doing the court examined the purpose of the provision and the 200 circumstances surrounding negotiations. It found that the rate change was resisted by the dairies, and that there was no discussion of plaintiff's particular position in the market. In concluding that the provisions did not violate the Sherman Act, the court predicated its decision on several distinct grounds. Although the contract provision conceivably affected milk prices, as did other conditions in the collective bargaining agreement, it was neither illegal per se as a price-fixing contract, nor ran "unreasonable" restraint of trade under the facts and circumstances of the industry. Furthermore, since there was no conspiracy by the union, which was motivated by labor goals, the provision was within the labor exemption of the Act.

Since the *Adams* case involved the same operative facts as the case before this court, in that there was no conspiracy, but only a controverted provision in a collective

bargaining agreement, which was fashioned by the union in its self interest and imposed upon employers despite their opposition, the case is a cogent precedent supporting the validity of the provision.

The court also finds apposite the statement and determination of the U. S. Supreme Court in *Telegraphers v. Chi. & N. W. R. Co.*, 362 U. S. 330, 362. There the Court held that the union's demand that the collective bargaining agreement specify that positions in existence as of a certain date would not be abolished except by agreement did not violate the Sherman Act. At p. 362 the court stated:

"We cannot agree with the Court of Appeals that the Union's effort to negotiate about the job security of its members represents an attempt to usurp legitimate managerial prerogative in the exercise of business judgment with respect to the most economical and efficient conduct of its operations."

201 Under this rationale, since the record here shows that night meat sales, even in self-service markets, require as a matter of practical operation the services of either butchers or other employees, the unions' insistence on the restriction to protect their work and job security, should be deemed a proper labor goal, and in no way a usurpation of the managerial prerogative. Therefore, that decision further substantiates the conclusion that the marketing hour restriction here, in protecting butchers against night hours and loss of work is within the labor exemption of the Sherman Act.

Even if the restriction on marketing hours were not held to be within the labor exemption, the provision would not necessarily violate the Sherman Act. Its legality would then be adjudged as any other contract between non-labor groups. Since the provision does not direct action held illegal per se, such as price fixing, division of markets, or

the creation of a monopoly (*U. S. v. Socony Vacuum Oil Co.*, 310 U. S. 150, 218; *No. Pac. R. Co. v. U. S.* 356 U. S. 1; cf. *U. S. v. Gas Ret. Ass'n*, 285 F. 2d 688), its legality depends upon whether it creates an "unreasonable" restraint of trade under the particular facts and circumstances relating to the industry (*U. S. v. DuPont de Nemours & Co.*, 351 U. S. 377, 386; *Appalachian Coals Inc. v. U. S.* 288 U. S. 344, 373).

Admittedly, collective bargaining agreements involve some restraint on competition. The mere fact that an agreement restrains competition, however, is not enough to condemn it (*Allen-Bradley v. Local Union*, at p. 81; *Appalachian Coals Inc. v. U. S.*, at p. 360). In the *Appalachian Coal* case the United States Supreme Court stated, "The legality of an agreement . . . cannot be determined by so

simple a test as to whether it restrains competition. 202 Every agreement concerning trade, every regulation of trade restrains." The court then explained that the application of the statute depended upon intent and effect, to be determined by close scrutiny of the condition of the industry, and the purpose and consequences of the restriction in relation to market prices.

The restriction on night sales of fresh meat obviously restrained a small segment of competition. There is no evidence, however, that it in any way destroyed competition among purveyors of fresh meat, created a monopoly, or adversely affected one purveyor more than another. (cf. *Phil. Rec. Co. v. Mfg. Eng'r Co.*, 155 F. 2d 799). Nor did the evidence in any way establish that less meat is consumed in this area, in proportion to population and income, because of the restriction, than in areas where fresh meat is sold at night. In fact, the objective statistics indicated that the restriction had no discernible effect. Furthermore, the doubtful benefits of night operations to the industry was evident from the fluctuating attitude of both the chains and

independents during the course of the various contract negotiations.

With respect to the effect of the restriction on the public, even if the self-service meat departments could operate at night without employees, there is no showing that such operations would result in economies or lower prices. Assuming *arguendo* the economic validity of the statistical study made by plaintiff's accountant relating to increased profits after night meat sales were undertaken in the stores studied, that study in no way established that lower prices ensued. In contrast to the *Allen-Bradley* case, where the price of electrical equipment was lower outside of New York than in the city because of the offending restriction, in the case at bar there is no evidence that in areas 203 where night operations are in effect the price of meat is lower, or, if so, the difference is due to the night marketing hours.

The only conceivable deleterious effect on the public from the restriction here is that those persons who find it more convenient to shop for meat at night are deprived of that convenience. However, the fact that some consumers would prefer longer than 54 hours during the week within which to buy fresh meat can hardly constitute the basis for holding a restriction on night hours to be an unreasonable restraint of trade. In fact, such a determination would be inconsistent with the decision of the United States Supreme Court holding that a limitation on operating hours imposed by a trade organization was reasonable and did not offend the Sherman Act. (*Chi. Bd. of Trade v. U. S.*, 246 U. S. 246 U. S. 238, 241).

Although the courts are, and should be, responsive to public convenience, they cannot invoke the Sherman Act as a "catch-all" remedy for any dissatisfactions with labor or business operations. There must be a curtailment of the values which the anti-trust laws are designed to promote

*Memorandum.*

before the Act can be applied. (*Apex Hosiery v. Leader*, 310 U. S. 469, 489, 493). According to this record, the purport, history and effect of the controverted provision indicates that it is within the labor exemption of the Sherman Act, unless that exemption be construed with "mutilating narrowness," (*U. S. v. Hutcheson*, 312 U. S. 219, 235), and that it imposed no "unreasonable" restraint on trade.

Since there is no violation of the Sherman Act the court need not consider whether plaintiff sustained any injury to its business, or whether it was in pari-delicto with the defendant unions.

204 The above and foregoing memorandum of the court shall constitute its findings of fact and conclusions of law. An order has this day been entered dismissing plaintiff's complaint.

/s/ Walter J. LaBuy,

*Judge of the United States  
District Court.*

March 22, 1963.



**Minute Order Dismissing Complaint.**

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**UNITED STATES DISTRICT COURT,  
Northern District of Illinois,  
Eastern Division.**

Name of Presiding Judge, Honorable Walter J. LaBuy.

Cause No. 58 C 1415

Date 3-22-63

Title of Cause

Jewel Tea Company, Inc. vs. Local Unions 189, 262,  
320, 546, 571, 638, etc.

Brief Statement of Motion

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of other counsel entitled to notice

Name and Addresses of other counsel entitled to notice and names of parties they represent.

Reserve space below for notations by minute clerk.

Enter Memorandum constituting Findings of Fact and Conclusions of Law. Enter order dismissing Plaintiff's complaint.

(Draft.)

Hand this memorandum to the Clerk.

Counsel will not rise to adress the Court until motion has been called.



IN THE UNITED STATES DISTRICT COURT  
For the Northern District of Illinois,  
Eastern Division.

Jewel Tea Co., Inc.

vs.

Local Unions Nos. 189, 262, 320,  
546, 547, 571 and 638 Amalga-  
mated Meat Cutters and Butcher  
Workmen of North America,  
AFL-CIO, *et al.*

No. 58 C 1415

NOTICE OF APPEAL TO THE COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT.

Clerk, United States District Court,  
United States Court House,  
Chicago, Illinois.

Notice is given that plaintiff, Jewel Tea Co., Inc., hereby  
appeals to the United States Court of Appeals for the  
Seventh Circuit from the judgment entered in this action  
on March 22, 1963 wherein the complaint was dismissed.

/s/ George B. Christensen,

/s/ Fred H. Daugherty,

Attorneys for

Jewel Tea Co., Inc.

Dated: April 19, 1963.

Winston, Strawn, Smith & Patterson,  
38 South Dearborn Street,  
Chicago 3, Illinois,  
Of Counsel.

**207. Attorneys for Defendants are:**

**Leo Segall**

**Asher, Gubbins & Segall**

**130 North Wells Street**

**Chicago 6, Illinois.**

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**Eardley & Ward**

**105 South La Salle Street**

**Chicago 3, Illinois.**

**Libit, Lindauer and Henry**

**77 West Washington Street**

**Chicago 2, Illinois.**

112 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1415) • •

## MEMORANDUM.

In an opinion reported as *Jewel Tea Co. v. Local Unions, etc.*, 274 F. 2d 217 (7th Cir. 1960) the complaint in this case survived defendants' attack. That opinion, describing the nature of this action, also examines significant elements of the complaint. It should, however, be noticed that the Court of Appeals was simply evaluating and testing pleadings on an interlocutory appeal. After affirmance and remand, various defendants filed answers and this cause proceeded to trial on the merits before the Court, sitting without a jury.

## I.

When the plaintiff rested, after introducing parol and documentary evidence, Charles Bromann and Associated Food Retailers of Greater Chicago, Inc., defendants, moved to dismiss this action (T. p. 594). At the same time another motion was made to dismiss the complaint on behalf of the defendant Unions, their named officers, and representatives (T. p. 622). These motions, it is assumed, were interposed under the authority of Rule 41 (b), Fed. R. Civ. P., providing, in part relevant here: "• • • After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. In an action tried by the court without a jury the court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the

court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a).

Plaintiff grounds its action on 15 U. S. C., § 15, which provides: "Any person who shall be injured in his business or property by reason of *anything forbidden* in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold damages by him sustained, and the cost of suit, including a reasonable attorney's fee." (Emphasis supplied.) Of course, at this stage of the case disposition of defendant's several motions turns upon the state of the plaintiff's evidence in this record. See, e.g., *Penn-Texas Corporation v. Morse*, 242 F. 2d 243 (7th Cir. 1957); *Allred v. Sasser*, 170 F. 2d 233, 235 (7th Cir. 1948).

Jewel has clearly established existence of union contracts under which this plaintiff is prevented from selling meat and meat products before 9:00 A. M. or after 6:00 P. M., Mondays through Saturdays, in its Chicago area stores. Moreover, such meats, if plaintiff were permitted so to do, would be sold pre-packaged via a self-service system.

Turning now to the defendants Associated Food Retailers of Greater Chicago, Inc., and Charles H. Bromann, Associated is a trade association "consisting of several thousand individual or independent food stores engaged in the retail sale of meat for human consumption in the Greater Chicago area." *Jewel Tea Co. v. Local Unions, etc.*, 274 Fed. 2d 217, 222 (7th Cir. 1960). Bromann is allegedly the Secretary and Treasurer of Associated. But the gist of the complaint is that there is and has been a conspiracy among and between Bromann, Associated, and the defendant Unions. Yet, there is wanting any evidence in this record tying in Associated and Bromann as con-

spirators. Bromann apparently conducts collective bargaining for and on behalf of Associated, which enjoys the industry wide contract.

115 From 1957 Jewel sought exclusion of the restriction on night sales, and the Union bargaining group resisted (T. P. 122). And the rest of the Industry agreed with the defendant Unions to continue the ban on night operations (T. P. 122). Yet, realistically speaking, there is absent any evidence showing Bromann or Associated, or both, conspired with the defendant Unions in forcing the restrictive clause upon Jewel. One would be pyramiding inferences upon inferences in order to find such as a fact.

Jewel's chief evidence was adduced through R. Emmett Kelly, called as an adverse witness, who is assistant business representative for Local 546. Kelly's testimony shows Union activity and is devoid of any significant mention of Bromann and Associated. Moreover, neither of those two defendants is a signatory on the Union Contracts received in evidence.

Accordingly, the motion interposed by Bromann and Associated is allowed.

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## II.

Since Jewel has sought relief from the defendant Unions apart from the theory of conspiracy, the court now denies the defendant Unions' motion to dismiss the complaint.

## III.

Counsel shall prepare suggested findings of fact and conclusions of law as provided in Rule 52(a) for that portion of the case wherein the motion of defendants Bromann and Associated has been sustained. Such findings shall also contain therein an express determination that there is no just reason for delay, in accordance with Rule 54, Fed. R. Civ. P.

*Memorandum of Opinion Dated Nov. 2, 1962.* 685

Judgment on the motion of defendants Bromann and Associated shall be entered accordingly.

Walter J. La Buy,  
*District Judge.*

Dated: November 2, 1962.



[fol. 687]

[File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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No. 14119

JEWEL TEA COMPANY, INC., Appellant,

vs.

ASSOCIATED FOOD RETAILERS OF GREATER CHICAGO, INC., and  
CHARLES H. BROMANN, Appellees.

and

No. 14196

JEWEL TEA COMPANY, INC., Appellant,

vs.

LOCAL UNIONS NO. 189, 262, AMALGAMATED MEAT CUTTERS  
AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO,  
Appellees.

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MOTION OF APPELLEES IN NO. 14119 TO JOIN IN BRIEF OF  
APPELLEES IN NO. 14196—Filed December 31, 1963

Now comes Associated Food Retailers of Illinois, Inc. (formerly known as Associated Food Retailers of Greater Chicago, Inc.) and Charles H. Bromann, Appellees in No. 14119 by their attorneys and moves this Honorable Court to enter an order allowing the brief about to be filed by Appellees in No. 14196 to stand as Appellees' brief in No. 14119.

Sidney M. Libit, One of the attorneys for Appellees in No. 14119.

[fol. 688] Certificate of Service (omitted in printing).

[fol. 689]

[File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

---

No. 14119

JEWEL TEA COMPANY, INC., Appellant,

v.

ASSOCIATED FOOD RETAILERS OF GREATER CHICAGO, et al.,  
Appellees.

No. 14196

JEWEL TEA COMPANY, INC., Appellant,

v.

LOCAL UNIONS NOS. 189, 262, 320, 546, 547, AND 638, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, et al., Appellees.

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RESPONSE OF APPELLEES IN NO. 14196 TO MOTION OF APPELLEES IN NO. 14119 TO HAVE "THE BRIEF ABOUT TO BE FILED BY APPELLEES IN NO. 14196 TO STAND AS APPELLEES' BRIEF IN NO. 14119"—Filed January 4, 1964

Appellees in No. 14196 do not object to reliance by appellees in No. 14119 upon the brief to be filed by appellees in No. 14196. However, appellees in No. 14196 wish it to be clearly and distinctly understood that their attorneys do not represent appellees in No. 14119, that the brief for appellees in No. 14196 is not being prepared in coopera-

tion or consultation with appellees in No. 14119 or the [fol. 690] latter's attorneys, and that appellees in No. 14196 are in no wise associated with appellees in No. 14119 in the conduct of this litigation.

Respectfully submitted,

Leo Segall, 130 North Wells Street, Chicago 6, Illinois;

Bernard Dunau, 912 Dupont Circle Building, Washington, D. C. 20036;

Robert C. Eardley, 105 S. LaSalle Street, Chicago 3, Illinois,

Attorneys for the Defendant Unions and Their  
Named Officers and Representatives.

[fol. 691] Certificate of Service (omitted in printing).

[fol. 692]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

Before: Hon. Elmer J. Schnackenberg, Circuit Judge.

Appeals from the United States District Court for the  
Northern District of Illinois, Eastern Division..

No. 14119

JEWEL TEA COMPANY, Plaintiff-Appellant,

vs.

ASSOCIATED FOOD RETAILERS OF GREATER CHICAGO, INC. and  
CHARLES H. BROMANN, Defendants-Appellees.

No. 14196

JEWEL TEA COMPANY, Plaintiff-Appellant,

vs.

LOCAL UNIONS Nos. 189, et al., Defendants-Appellees.

ORDER GRANTING LEAVE TO JOIN IN BRIEF, ETC.—

January 6, 1964

This matter comes before the Court on the motion of appellees in appeal No. 14119 to join in the brief of appellees in No. 14196, and the written response of appellees in No. 14196 that they do not object to said motion, and the appellant having advised the Court that he has no objections to said motion.

On consideration whereof, It Is Hereby Ordered that the said motion be granted, and leave is hereby granted to Associated Food Retailers of Illinois, Inc., et al., appellees in appeal No. 14119 that the brief about to be filed by appellees in appeal No. 14196 stand as the appellees' brief in appeal No. 14119.

[fol. 693]

In the

# United States Court of Appeals

## For the Seventh Circuit

Nos. 14119, 14196

SEPTEMBER TERM, 1963      APRIL SESSION, 1964

JEWEL TEA COMPANY, INC., a New  
York corporation,  
*Plaintiff-Appellant.*

No. 14119:

v.

ASSOCIATED FOOD, RETAILERS OF  
GREATER CHICAGO, INC., an Illinois  
corporation, and CHARLES H. BRO-  
MANN,  
*Defendants-Appellees.*

JEWEL TEA COMPANY, INC., a New  
York corporation,  
*Plaintiff-Appellant.*

No. 14196

v.

LOCAL UNIONS NOS. 189, 262, 320,  
546, 547, 571 and 638, AMALGAM-  
ATED MEAT CUTTERS AND BUTCHER  
WORKMEN OF NORTH AMERICA,  
AFL-CIO, et al.,  
*Defendants-Appellees.*

Appeals from the  
United States Dis-  
trict Court for the  
Northern District  
of Illinois, Eastern  
Division.

OPINION—April 27, 1964

Before HASTINGS, *Chief Judge*, and DUFFY and SCHNACK-  
ENBERG, *Circuit Judges*.

SCHNACKENBERG, *Circuit Judge*. Jewel Tea Company,  
Inc., a New York corporation, plaintiff, has appealed from  
judgments entered by the district court, after our remand  
in case No. 12653.<sup>1</sup>

<sup>1</sup> 274 F. 2d 217 (1960); cert. den., 362 U. S. 936.

[fol. 694]

This action is for a declaratory judgment and seeks relief under the Sherman Act. 15 U.S.C.A. §§ 1 and 2.

At a trial, the district court dismissed defendants Associated Food Retailers of Greater Chicago, Inc., an Illinois corporation, and Charles H. Bromann, its secretary, at the close of plaintiff's case,<sup>2</sup> which action is attacked in No. 14119, and dismissed the complaint as to the defendants Local Unions Nos. 189, 262, 320, 346, 347, 371 and 638 of Amalgamated Meat Cutters and Butcher Workmen of North America AFL-CIO and certain officers and representatives of the unions as named in our opinion in case No. 12653, at the close of all the evidence,<sup>3</sup> which action is attacked in No. 14196. The appeals have been consolidated here.

Plaintiff contends that the district court erroneously failed to follow the law of the case and the principles of antitrust law, and disregarded the arbitrary and unreasonable nature of the restraint (imposed by defendants on plaintiff's business) and the magnitude of its effect on trade. Defendants urge that plaintiff failed to prove a conspiracy, and that union activity to attain market operating hours is a reasonable regulation of trade not within the prohibition of the Sherman Act, and does not restrain interstate commerce. Also, they argue that plaintiff failed to prove injury to its business or property and that it is *in pari delicto*.

In our prior opinion, at 221, we said:

"Facts set forth in the complaint show a widespread public demand in the Chicago area that meat be available for retail purchase at Jewel stores during one or more evenings of the week. Plaintiff has an untrammelled right to determine its course of action in respect to this matter.

"Whether one system of marketing or another offers the greater good and better prices in any given community is to be determined by the public; the laws of free competition may not be thwarted by a combination of employers and unions who conspire to prevent commercial development."

The evidence admitted by the district court on remand is in the record now before us. It sustains the material

<sup>2</sup> 215 F. Supp. 837.

<sup>3</sup> *Ibid.* 839.



[fol: 695]

allegations of the complaint. There are no factual disputes revealed by the evidence. No question as to the credibility of any witnesses on any issue which we consider relevant, has been raised. Therefore, our holding of the law on the facts as stated in the complaint we now adopt as our holding of the law as applied to the evidence upon remand. Especially do we reaffirm our rejection of defendants' contention that an agreement pertaining to market operating hours is exempt from the antitrust laws since it was entered into in the self-interest of the employees to attain or maintain conditions deemed by the union relevant to the employees' working welfare. Significantly, we then quoted from *Allen Bradley Co. v. Local Union No. 3, IBEW*, 325 U. S. 797 (1945), where the exemption was qualified, the court stating at 808-810:

... Congress never intended that unions could, consistently with the Sherman Act, aid non-labor groups to create business monopolies and to control the marketing of goods and services.

"Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups. \* \* \* (Emphasis supplied.)

The district court sought to support its decision by citing the fact that, as a result of collective bargaining between the meat butchers and the retailers in 1920, they entered into an agreement which covered many questions in dispute, including a limitation on marketing hours. The court points out that when plaintiff came into the Chicago area in 1933, it entered into similar agreements with defendant unions. Such agreements did follow in succession until 1957 when plaintiff raised and insisted upon the position it takes in this case. Plaintiff in 1957, 1959 and 1961 sought an agreement on evening operations. It was unsuccessful.

The district court states as its principal finding that the "restriction [against evening hours] was imposed after arm's length bargaining. \* \* \* These are not objects which the anti-trust laws proscribe. They are conditions of employment, and as such are clearly within the labor exemption of the Sherman Act. \* \* \* We cannot agree. To make a business succeed, thereby furnishing employ-

[**¶** 696]

ment to persons engaged in its operation, the responsibility rests upon the employer to determine where the business will be located, his acquisition of necessary buildings and fixtures, the installation of the business and its subsequent maintenance, his establishment of credit with suppliers of commodities and the various other responsibilities resting upon a proprietor. One of the proprietary functions is the determination of what days a week and what hours of the day the business will be open to supply its customers. Among the decisions which the proprietor must make and upon which his success and the livelihood of his employees depend is how to attract customers, which must be accomplished by the quality of merchandise offered at such times as shall be convenient to the public.\* It follows clearly that whether fresh meats are to be sold after 6 P.M. depends upon the convenience and requirements of the people living within shopping distance of the place of business. The hours of the day when his business is to be open to accommodate the demands of customers, in the judgment of the owner of the business, is not a condition of employment, contrary to the district court's finding. As long as all rights of employees are recognized and duly observed by the employer, including the number of hours per day that any one shall be required to work, any agreement by a labor union, acting in concert with business competitors of the employer, designed to interfere with his operation of a retail business, engaged in handling products in the course of interstate commerce, is a violation of the Sherman Act, and not entitled to the exemption therefrom claimed by the defendant unions in this case.

The district court overlooks the fact that whether the butchers have jobs at all depends on whether they will serve the demands of the public. It also overlooks that the furnishing of a place and advantageous hours of employment for the butchers to supply meat to customers are the prerogatives of the employer. As we said (274 F. 2d at 221):

“ \* \* \* An employer has the right and it is his duty, if he is to survive commercially, first to determine the needs of the public, second to provide a time, a

\* The district court summarily disposed of the effect on the public of evening shopping for fresh meat, by saying:

“The only conceivable deleterious effect on the public from the restriction here is that those persons who find it more convenient to shop for meat at night are deprived of that convenience. \* \* \*

[fol. 697]

place and facilities for meeting those needs, and third to provide, under the terms of the National Labor Relations Act, the services of employees to accomplish the foregoing objectives. The rights of labor attach only to the *third*, and if any effort is made by labor to infringe rights of the employer in the first or second field, it is not shielded from the sword of the anti-trust laws. Determining the needs of the public and meeting those needs are inherent proprietary rights and obligations of the employer and must be clearly distinguished from his rights and duties as master in the master and servant relationship. Setting marketing hours is one such proprietary function which an employer has the exclusive right to determine as dictated by economic factors present within his trading area." (Italics supplied.)

Defendants would apply to their purpose *Board of Trade v. United States*, 246 U. S. 231 (1918). In that case the court found that a rule of the Chicago Board of Trade had only a slight effect as a restriction upon free competition in the pricing of grain and, at 240, said that it "created a public market for grain 'to arrive' ". It pointed out that it provided an improvement in actual market conditions, in several specific ways and thus was promotive of competition rather than destructive thereof in its actual effect.

There is *no* evidence in *this* record showing that the net effect of the market hours restraint promotes competition. The opinion of the district court is devoid of *any* finding to that effect. On the contrary, the record shows that the effects of the restriction are wholly negative and destructive of competition. Even the district court expressly found that the restriction "obviously restrained a small segment of competition". We believe that the market hours restriction cannot come within the rule of reason announced in *Chicago Board of Trade v. United States*, *supra*. Moreover, a case concerned with the problems of a specialized commodity exchange and a rule thereof which was affirmatively found to have *promoted* competition is scarcely authority for upholding a restraint which seriously suppresses and interferes with competitive forces in a widespread retail marketing area. The district court's reliance on *Chicago Board of Trade* was, therefore, not justified.

In the case at bar, during oral argument, we were surprised by unions' counsel, who, while emotionally main-

[fol. 698]

taining that union butchers should be given an opportunity to be with their children on Friday evenings, spurned a suggestion that other fathers in Chicago and its suburbs might desire to be at home with *their* children, while their wives took the family car to do their meat shopping on that evening. But defendants' counsel was positive that, in considering the application of the antitrust laws, the convenience and welfare of the public are irrelevant.

The evidence on remand supports the allegations of the complaint charging that the unions and the Associated Food Retailers of Greater Chicago, Inc., defendants, effectuated through a contract, an unreasonable restraint of trade. By detailed and persuasive evidence plaintiff has shown that, as a result, it has been injured in its business and property. The fact of defendants' unlawful restraint on interstate commerce is supported by convincing evidence.

As to the assertion that plaintiff is *in pari delicto*, we decided on the prior appeal, 274 F. 2d 217, 223:

"Appellants next assert that plaintiff is without standing to sue because, as a party to the alleged illegal agreement it is *in pari delicto*. Appellants concede, however, that the *in pari delicto* defense does not apply where plaintiff's participation in the wrong alleged was induced by economic necessity, or where plaintiff's wrongful act is divorced from the illegal conspiracy, agreement or combination alleged in the complaint.

"\* \* \* When a business organization is the victim of an *illegal conspiracy* between certain of its competitors and a labor union to restrain trade, the business organization is not required to fight the matter out by economic warfare thus subjecting its employees who are not members of the offending union, its customers, and its stockholders, to the losses, inconvenience and damages of a strike, all for the purpose of shielding itself from the *in pari delicto* stigma.

"In view of the factual situation which confronted plaintiff, the defense of *in pari delicto* is not available here. \* \* \*

We adhere to those views.

Plaintiff's complaint charged that defendants engaged in an unlawful combination and conspiracy to suppress competition among retail meat markets in the Chicago area

[fol. 699]

and to prevent the sale of meat before 9 A.M. or after 6 P.M. Mondays through Saturdays.

In view of the facts in this case as shown by the evidence, it is clear that plaintiff proved that the unions, Associated Food Retailers and Bromann, its secretary, entered into a combination or agreement, which constituted a conspiracy, as charged in the complaint. It was therefore illegal and void because violative of the Sherman Act. *Allen Bradley Co. v. Local Union No. 3, supra*; cf. *United States v. Hutcheson*, 312 U. S. 219, 232 (1941).

In *Interstate Circuit, Inc. v. United States*, 306 U. S. 208, 227 (1939), the court said:

“ \* \* \* Acceptance by competitors, without previous agreement, of an invitation to participate in a plan, the necessary consequence of which, if carried out, is restraint of interstate commerce, is sufficient to establish an unlawful conspiracy under the Sherman Act. \* \* \* ”

In *Brotherhood of Carpenters v. United States*, 330 U. S. 395 (1947), the court used the words “conspiracy” and “contract” interchangeably.

The district court in the case at bar found that “From 1957 Plaintiff sought exclusion of the restriction on night sales from the industry-wide contract, and the Defendant Local Unions resisted such exclusion. The rest of the Industry agreed with the Defendant Local Unions to continue the ban on night operations.” (Italics supplied.)

The agreement between the unions and Associated Food Retailers is still operative as shown by their common defense in this case.<sup>5</sup> Whether it be called an agreement, a contract or a conspiracy, is immaterial.

For the reasons above stated, we reverse the judgment of the district court dismissing the case as to defendants Associated Food Retailers of Greater Chicago, Inc. and Charles H. Bromann, and the judgment of that court dismissing the case as to all other defendants therein, and we direct, in case No. 14119, that said case be remanded to the district court for such further proceedings as may be consistent with this opinion; and in case No. 14196 we

<sup>5</sup> We granted Associated's motion that the Unions' brief stand as the brief of Associated and Bromann, its secretary.

Likewise, in our prior opinion, 274 F. 2d 217, 222, note 4, we said:

“Associated and Bromann have entrusted their interests in the defense of this suit to counsel for the unions. They formally adopted by reference the latter's motions and briefs.”



[fol. 700]

direct that said case be remanded to the district court to enter a declaratory judgment and an injunction substantially as prayed in the complaint herein and to ascertain and award to plaintiff such monetary relief as may be appropriate under this court's opinion.

**REVERSED AND REMANDED  
WITH DIRECTIONS.**



[fol. 701]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

Before: Hon. John S. Hastings, Chief Judge, Hon. F. Ryan Duffy, Circuit Judge, Hon. Elmer J. Schnackenberg, Circuit Judge.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 14119

JEWEL TEA COMPANY, INC., a New York corporation,  
Plaintiff-Appellant,

vs.

ASSOCIATED FOOD RETAILERS OF GREATER CHICAGO, INC., an Illinois corporation, and CHARLES H. BROMANN, Defendants-Appellees.

No. 14196

JEWEL TEA COMPANY, INC., a New York corp.,  
Plaintiff-Appellant,

vs.

LOCAL UNIONS NOS. 189, 262, 320, 546, 547, 571 AND 638, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, et al., Defendants-Appellees.

JUDGMENT—April 27, 1964

This cause came on to be heard on the transcript of the record from the United States District Court for the North-

ern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court dismissing the case as to defendants Associated Food Retailers of Greater Chicago, Inc. and Charles H. Bromann, and the judgment of that Court dismissing the case as to all other defendants therein be, and the same is hereby, REVERSED, with costs. It Is further ordered that case No. 14119 be, and the same is hereby REMANDED to the said District Court for such further proceedings as may be consistent with the opinion of this Court filed this day; and that case No. 14196 be, and the same is hereby REMANDED to the said District Court with directions to enter a declaratory judgment and an injunction substantially as prayed in the complaint herein and to ascertain and award to plaintiff such monetary relief as may be appropriate under the opinion of this Court filed this day.

[fol. 702] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 703]

SUPREME COURT OF THE UNITED STATES

No. 240—October Term, 1964

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LOCAL UNION No. 189, AMALGAMATED MEAT CUTTERS, AND  
BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, et al.,  
Petitioners,

vs.

JEWEL TEA COMPANY, INC.

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ORDER ALLOWING CERTIORARI—October 12, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted limited to Questions 1 and 2 presented by the petition which read as follows:

"1. Based on the District Court's undisturbed finding that the limitation 'was imposed after arm's length bargaining, . . . and was fashioned exclusively by the unions to serve their own interests—how long and what hours members shall work, what work they shall do, and what pay they shall receive' (R. 672), whether the limitation upon market operating hours and the controversy concerning it are within the labor exemption of the Sherman Antitrust Act.

"2. Whether a claimed violation of the Sherman Antitrust Act which falls within the regulatory scope of the National Labor Relations Act is within the exclusive primary jurisdiction of the National Labor Relations Board."

The case is placed on the summary calendar and set for oral argument immediately following No. 48.

October 12, 1964

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.